

Regulations 5237, *Board Approval Required for Refunds Over \$50,000*; and  
5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests  
for Oral Hearings*

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**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



**SUSAN LAPSLEY**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk *[Signature]*  
DATE: 1/21/2010  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2009-1204-01S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2009-1204-01S regarding Board Approval Required for Refunds Over \$50, 000).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30<sup>th</sup> Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

**State of California  
Office of Administrative Law**

In re:  
Board of Equalization

NOTICE OF APPROVAL OF REGULATORY  
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 18, California Code of Regulations

OAL File No. 2009-1204-01 S

Adopt sections:


Amend sections: 5237, 5266

Repeal sections:

This rulemaking amends two sections within Title 18 to clarify, that staff, as a result of a vote by the California Board of Equalization delegating the authority, have the authority, without further approval from Board Members to grant or deny specified refunds. This amends these sections to increase the delegation from \$50,000 to cover amounts up to \$100,000. This amendment further specifies that if a refund should be granted in excess of \$50,000 (or \$15,000 in one instance) that this determination must be available as a public record for 10 days prior to its effective date.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 2/19/2010.

Date: 1/20/2010

  
Peggy J. Gibson  
Staff Counsel

For: SUSAN LAPSLEY  
Director

Original: Ramon Hirsig  
Copy: Richard Bennion

**RECEIVED**  
JAN 25 2010  
Board Proceedings

**RECEIVED**

JAN 22 2010

by EXECUTIVE DIRECTOR'S OFFICE  
STATE BOARD OF EQUALIZATION

## NOTICE PUBLICATION/REGULATION SUBMISSION

REGULAR

(S) Instruction  
Reversal, on

For use by Secretary of State only

STD. 400 (REV. 01-09)

NOTICE FILE NUMBER <b>Z-2009-0615-02</b>	REGULATORY ACTION NUMBER <b>2009-1204-01S</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		
<div style="text-align: center;"> 2009 DEC -4 AM 10:58  OFFICE OF  ADMINISTRATIVE LAW </div>		
NOTICE		REGULATIONS
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization		AGENCY FILE NUMBER (if any)

ENDORSED FILED  
IN THE OFFICE OF

2010 JAN 20 PM 2:35

  
DEBRA BOWEN  
SECRETARY OF STATE
**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

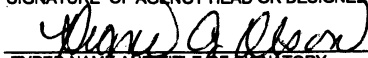
1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER <b>2009, #26-Z</b>	PUBLICATION DATE <b>6-26-2009</b>

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Board Approval Required for Refunds Over \$50,000		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
		AMEND 5237, 5266	
TITLE(S) 18		REPEAL	
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE



TYPED NAME AND TITLE OF SIGNATORY

Diane G. Olson, Chief, Board Proceedings Division

DATE  
12/03/09

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 20 2010

Office of Administrative Law



**Proposed Amendments to California Code of Regulations,  
Title 18, Sections 5237**

**5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER ~~\$50,000~~  
\$100,000.**

(a) If Board Staff in the assigned section or group determines that a refund in excess of ~~\$50,000~~ \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Board.

(b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.

(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).

(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of ~~\$50,000~~ \$100,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.

(e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.

(f) If Board Staff in the assigned section determines that a refund in excess of ~~\$50,000~~ \$100,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

(g) If Board Staff determines that a refund in excess of \$50,000 should be granted and the determination is not required to be submitted to the Board, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, 60521.

## **Proposed Amendments to California Code of Regulations, Title 18, Sections 5266**

### **5266. APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR ORAL HEARINGS.**

(a) Appeals Staff may make the following recommendations in the Decision and Recommendation:

- (1) Deny the petition, claim, or request for relief in its entirety.
- (2) Grant the petition, claim, or request for relief in its entirety.
- (3) Grant the petition, claim, or request for relief in part.
- (4) That Board Staff in the appropriate Department re-audit the issues raised in the petition, claim, or request for relief as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued.

(2) Disagree and file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

(A) If an oral hearing is or was requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or supplemental Decision and Recommendation) Board Staff will:

- (i) Contact the petitioner, claimant, or person requesting relief to inquire as to the existence of such disagreement; and
- (ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.

(3) Agree with the Decision and Recommendation.

(c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Department represented at the appeals conference, and any state agency represented at the appeals conference, may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief within 30 days after the Decision and Recommendation was issued.

(2) Agree with the Decision and Recommendation.

(d) Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any state agency represented at the appeals conference may file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. If an oral hearing is requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(e) If Appeals Staff receive a request for reconsideration, Appeals Staff will prepare a Supplemental Decision and Recommendation addressing any new information provided in the request for reconsideration, copies of which will be sent to all parties. Appeals Staff may also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c).

(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds ~~\$50,000~~\$100,000, the recommendation will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.

(g) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that an amount that exceeds \$50,000 be refunded, credited or canceled and the recommendation does not require Board approval, the proposed determination to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date. If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that an amount that exceeds \$15,000, which was determined pursuant to the Integrated Waste Management Fee Law, be canceled and the recommendation does not require Board approval, the proposed determination to cancel such amount must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

File# 2009-1203-02

**AIR RESOURCES BOARD****Plug-in Hybrid Electric Vehicles and Aftermarket Parts**

This rulemaking amends or adopts regulations, and related testing and certification procedures documents, to establish new Equivalent All Electric Range exhaust and evaporative emissions test procedures for blended Plug-In Hybrid Electric Vehicles (PHEV); it adopts new test procedures to determine whether these vehicles qualify for Type F or Type G advanced componentry allowances under Zero Emission Vehicle regulations; it adopts a new test procedure for testing the All Electric Range of fuel-cell powered vehicles; it adopts a new definition of "sealed fuel system" for evaporative emissions testing exemption purposes; and it adopts a new after-market parts certification procedure for PHEV conversion systems.

## Title 13

## California Code of Regulations

ADOPT: 2032 AMEND: 1961, 1962, 1962.1, 1976, 1978

Filed 01/14/2010

Effective 02/13/2010

Agency Contact: Amy Whiting (916) 322-6533

File# 2009-1204-01

**BOARD OF EQUALIZATION****Board Approval Required for Refunds Over \$50,000**

This rulemaking amends two sections within Title 18 to clarify that staff, as a result of a vote by the California Board of Equalization delegating the authority, have the authority, without further approval from Board Members to grant or deny specified refunds. This amends these sections to increase the delegation from \$50,000 to cover amounts up to \$100,000. This amendment further specifies that if a refund should be granted in excess of \$50,000 (or \$15,000 in one instance) that this determination must be available as a public record for 10 days prior to its effective date.

## Title 18

## California Code of Regulations

AMEND: 5237, 5266

Filed 01/20/2010

Effective 02/19/2010

Agency Contact:

Richard Bennion (916) 445-2130

File# 2009-1209-03

**CALIFORNIA ARTS COUNCIL****Conflict of Interest Code**

This is a Conflict of Interest Code filing that has been approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of

State and printing in the California Code of Regulations.

## Title 2

## California Code of Regulations

AMEND: Section 27000

Filed 01/14/2010

Effective 02/15/2010

Agency Contact: Marilyn Nielsen (916) 322-6404

File# 2010-0112-07

**DEPARTMENT OF FOOD AND AGRICULTURE****White Striped Fruit Fly Interior Quarantine**

This is a readoption of the prior emergency regulatory action (OAL file no. 2009-0729-01E) that established a quarantine area of approximately 81 square miles in Los Angeles and San Bernardino counties for the white striped fruit fly (*Bactrocera albistrigata*). The emergency regulation also established the articles and commodities covered and the restrictions on the articles and commodities covered. The effect of the proposed adoption of this regulation is to provide authority to the State to conduct quarantine activities against the white striped fruit fly in the quarantine area.

## Title 3

## California Code of Regulations

ADOPT: 3436

Filed 01/19/2010

Effective 01/19/2010

Agency Contact: Stephen S. Brown (916) 654-1017

File# 2010-0104-04

**FISH AND GAME COMMISSION****Incidental Take of Pacific Fisher During Candidacy**

This is the second and final emergency readoption by the Fish and Game Commission adopting section 749.5 in Title 14 of the California Code of Regulations to provide for the incidental take of Pacific fisher during its candidacy for listing as an endangered or threatened species under CESA, in accordance with Fish and Game Code section 2084. This is a straight readoption, with no change to the emergency language.

## Title 14

## California Code of Regulations

ADOPT: 749.5

Filed 01/14/2010

Effective 01/26/2010

Agency Contact: Sherrie Fonbuena (916) 654-9866

File# 2009-1202-01

**FISH AND GAME COMMISSION****Bay Delta Sport Fishing Enhancement Stamp**

This Section 100 filing repeals section 1.18 in Title 14 of the CCR because the specific authority for imposition of a Bay Delta Sports Fishing Enhancement Stamp

/s/  
SUSAN LAPSLEY  
Director

/s/  
Kathleen Eddy  
Senior Counsel

Copy: Matthew Cate  
Timothy Lockwood  
John McClure

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2009-1209-01  
BOARD OF EQUALIZATION  
Alcoholic Beverage Tax Law

This action is to amend the header form identifier for several forms, amend the title for other forms, amend authority and reference citations, revise the reference to the federal agency responsible for oversight and make some grammatical corrections.

Title 18  
California Code of Regulations  
AMEND: 2504, 2505, 2506, 2507, 2508, 2509,  
2512, 2513, 2514, 2525, 2530, 2535, 2536, 2537,  
2538, 2540, 2541, 2542, 2543, 2544, 2557, 2560,  
2561  
Filed 01/25/2010  
Agency Contact:  
Richard Bennion (916) 445-2130

File# 2009-1204-01  
BOARD OF EQUALIZATION  
Board Approval Required for Refunds Over \$50,000

This rulemaking amends two sections within Title 18 to clarify that staff, as a result of a vote by the California Board of Equalization delegating the authority, have the authority, without further approval from Board Members, to grant or deny specified refunds. This amends these sections to increase the delegation from \$50,000

to cover amounts up to \$100,000. This amendment further specifies that if a refund should be granted in excess of \$50,000 (or \$15,000 in one instance) that this determination must be available as a public record for 10 days prior to its effective date.

Title 18  
California Code of Regulations  
AMEND: 5237, 5266  
Filed 01/20/2010  
Effective 02/19/2010  
Agency Contact:  
Richard Bennion (916) 445-2130

File# 2010-0120-01  
CALIFORNIA ALTERNATIVE ENERGY AND  
ADVANCED TRANSPORTATION FINANCING  
AUTHORITY  
Extension of Previously Adopted CAEATFA Emergency Regulations

The Public Resources Code creates the California Alternative Energy and Advanced Financing Authority (Authority) and authorizes it to fix fees and charges for projects to fund expenses incurred by the Authority in carrying out its duties. Existing section 10020 of title 4 of the California Code of Regulations sets fees for projects generally, but there are no specific fees established for renewable energy projects. This filing is the readoption of an emergency regulatory action which added a separate fee structure to section 10020 to establish a renewable energy program and lower the cost of financing these technologies while allowing the Authority to be self sustaining. The initial filing of this regulatory action was mandated to be in the form of emergency regulations and deemed necessary for the immediate preservation of the public peace, health and safety, and general welfare by the Legislature pursuant to section 26011.6(b) of the Public Resources Code.

Title 4  
California Code of Regulations  
AMEND: 10020  
Filed 01/27/2010  
Effective 01/27/2010  
Agency Contact:  
Samantha Russell (916) 654-6061

File# 2009-1216-05  
CALIFORNIA HORSE RACING BOARD  
Possession of Contraband

This regulatory action provides that no person other than a veterinarian licensed by the Board shall have in his or her possession at a facility under the jurisdiction of the Board any substance or medication that has been prepared or packaged for injection by a hypodermic syringe or hypodermic needle, nor possess any medicine.

Rulemaking File Index  
Title 18. Public Revenue  
Sales and Use Tax

Regulations 5237, *Board Approval Required for Refunds Over \$50,000*; and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*

1. *Final Statement of Reasons*
2. *Updated Informative Digest*
3. *Deputy Director's Report, May 27, 2009, Item P3.a.1*
  - Deputy Director's Memo
  - Formal Issue Paper Number 08-014
  - Exhibit 1, Revenue Estimate
  - Exhibit 2, List of Revenue and Taxation Code Sections
  - Exhibit 3, Refund Claims Requiring Board Approval - Lenders
  - Exhibit 4, Adjustment for Inflation
  - Exhibit 5, Refund Claims Requiring Board Approval
  - Exhibit 6, Regulation 5237 \$100,000
  - Exhibit 7, Regulation 5237 \$250,000
4. *Reporter's Transcript Deputy Director's Report, May 27, 2009, Item P3.a.1*
5. *Estimate of Cost or Savings, August 6, 2009*
6. *Economic and Fiscal Impact Statements, Regulation 5237, June 15, 2009*
7. *Economic and Fiscal Impact Statements, Regulation 5266, June 15, 2009*
8. *Notice of Publications*
  - Form 400 submitted to OAL June 15, 2009
  - Notice and Proposed Text of Regulations 5237 and 5266
  - Email sent to Interested Parties, June 26, 2009
  - CA Regulatory Notice Register 2009, Volume No. 26-Z
9. *Notice to Interested Parties, June 26, 2009*

The following items are exhibited:

  - Notice of Hearing
  - Initial Statement of Reasons
  - Proposed Text of Regulations 5237 and 5266
  - Regulation History
10. *Statement of Compliance*
11. *Reporter's Transcript, Item F1, Public Hearing, August 31, 2009*
12. *Draft Minutes, August 31, 2009, and Exhibits*

13. [\*Revised Estimate of Cost/ Savings, November 13, 2009\*](#)
14. [\*Revised Economic and Fiscal Impact Statement, November 13, 2009\*](#)
15. [\*15 Day Letter\*](#)

The following items were attached to the Letter:

  - 15 Day Letter to interested parties, September 18, 2009
  - Proposed revised text of Regulations 5237 and 5266
  - History of regulation
16. [\*Statement of Compliance\*](#)
17. [\*Draft minutes of the State Board of Equalization's Meeting\*](#), Chief Counsel Matters, Rulemaking, October 6, 2009, Item J1. The following items are exhibited:
  - Memo to Executive Director from Chief of Board Proceedings, September 21, 2009
  - 15 Day Notice to interested parties, September 18, 2009
  - Proposed revised text of Regulations 5237 and 5266
  - History of regulation
18. [\*Reporter's Transcript Chief Counsel Matters\*](#), Rulemaking, October 6, 2009, Item J1

#### VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on November 21, 2009 and that the attached copy is complete. The file was reopened on January 19, 2010 and a corrected Statement of Compliance for the 15-day letter behind tab 16 was inserted. The file was then closed again on January 19, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

January 19, 2010    \_\_\_\_/S/\_\_\_\_

Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization



Rulemaking File Index  
Title 18. Public Revenue  
Sales and Use Tax

*Regulations 5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*

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  - Exhibit 2, List of Revenue and Taxation Code Sections
  - Exhibit 3, Refund Claims Requiring Board Approval - Lenders
  - Exhibit 4, Adjustment for Inflation
  - Exhibit 5, Refund Claims Requiring Board Approval
  - Exhibit 6, Regulation 5237 \$100,000
  - Exhibit 7, Regulation 5237 \$250,000
4. Reporter's Transcript Deputy Director's Report, May 27, 2009, Item P3.a.1
5. Estimate of Cost or Savings, August 6, 2009
6. Economic and Fiscal Impact Statements, Regulation 5237, June 15, 2009
7. Economic and Fiscal Impact Statements, Regulation 5266, June 15, 2009
8. Notice of Publications
  - Form 400 submitted to OAL June 15, 2009
  - Notice and Proposed Text of Regulations 5237 and 5266
  - Email sent to Interested Parties, June 26, 2009
  - CA Regulatory Notice Register 2009, Volume No. 26-Z
9. Notice to Interested Parties, June 26, 2009

The following items are exhibited:

  - Notice of Hearing
  - Initial Statement of Reasons
  - Proposed Text of Regulations 5237 and 5266
  - Regulation History
10. Statement of Compliance
11. Reporter's Transcript, Item F1, Public Hearing, August 31, 2009
12. Draft Minutes, August 31, 2009, and Exhibits

13. Revised Estimate of Cost/ Savings, November 13, 2009
14. Revised Economic and Fiscal Impact Statement, November 13, 2009
15. 15 Day Letter

The following items were attached to the Letter:

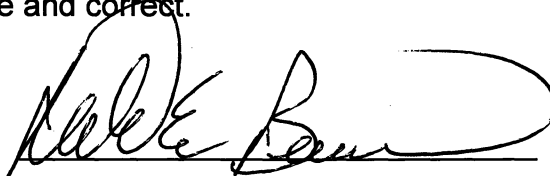
- 15 Day Letter to interested parties, September 18, 2009
  - Proposed revised text of Regulations 5237 and 5266
  - History of regulation
16. Statement of Compliance
  17. Draft minutes of the State Board of Equalization's Meeting, Chief Counsel Matters, Rulemaking, October 6, 2009, Item J1. The following items are exhibited:
    - Memo to Executive Director from Chief of Board Proceedings, September 21, 2009
    - 15 Day Notice to interested parties, September 18, 2009
    - Proposed revised text of Regulations 5237 and 5266
    - History of regulation
  18. Reporter's Transcript Chief Counsel Matters, Rulemaking, October 6, 2009, Item J1

#### VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on November 21, 2009 and that the attached copy is complete. The file was reopened on January 19, 2010 and a corrected Statement of Compliance for the 15-day letter behind tab 16 was inserted. The file was then closed again on January 19, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

January 19, 2010



Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization

Rulemaking File Index  
Title 18. Public Revenue  
Sales and Use Tax

*Regulations 5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*

- ✓ 1. Final Statement of Reasons
- ✓ 2. Updated Informative Digest
- ✓ 3. Deputy Director's Report, May 27, 2009, Item P3.a.1
  - ✚ Deputy Director's Memo
  - ✚ Formal Issue Paper Number 08-014
  - ✚ Exhibit 1, Revenue Estimate
  - ✚ Exhibit 2, List of Revenue and Taxation Code Sections
  - ✚ Exhibit 3, Refund Claims Requiring Board Approval - Lenders
  - ✚ Exhibit 4, Adjustment for Inflation
  - ✚ Exhibit 5, Refund Claims Requiring Board Approval
  - ✚ Exhibit 6, Regulation 5237 \$100,000
  - ✚ Exhibit 7, Regulation 5237 \$250,000
- ✓ 4. Reporter's Transcript Deputy Director's Report, May 27, 2009, Item P3.a.1
- ✓ 5. Estimate of Cost or Savings, August 6, 2009 6-17-09
- ✓ 6. Economic and Fiscal Impact Statements, Regulation 5237, June 15, 2009
- ✓ 7. Economic and Fiscal Impact Statements, Regulation 5266, June 15, 2009
- ✓ 8. Notice of Publications
  - ✚ Form 400 submitted to OAL June 15, 2009
  - ✚ Notice and Proposed Text of Regulations 5237 and 5266
  - ✚ Email sent to Interested Parties, June 26, 2009
  - ✚ CA Regulatory Notice Register 2009, Volume No. 26-Z
- ✓ 9. Notice to Interested Parties, June 26, 2009

The following items are exhibited:

  - ✚ Notice of Hearing
  - ✚ Initial Statement of Reasons
  - ✚ Proposed Text of Regulations 5237 and 5266
  - ✚ Regulation History
- ✓ 10. Statement of Compliance
- ✓ 11. Reporter's Transcript, Item F1, Public Hearing, August 31, 2009
- ✓ 12. Draft Minutes, August 31, 2009, and Exhibits

- ✓13. Revised Estimate of Cost/ Savings, November 13, 2009
- ✓14. Revised Economic and Fiscal Impact Statement, November 13, 2009
- ✓15. 15 Day Letter

The following items were attached to the Letter:

- ✚• 15 Day Letter to interested parties, September 18, 2009
  - ✚• Proposed revised text of Regulations 5237 and 5266
  - ✚• History of regulation
- ✓16. Statement of Compliance
- ✓17. Draft minutes of the State Board of Equalization's Meeting, Chief Counsel Matters, Rulemaking, October 6, 2009, Item J1. The following items are exhibited:
- ✚• Memo to Executive Director from Chief of Board Proceedings, September 21, 2009
  - ✚• 15 Day Notice to interested parties, September 18, 2009
  - ✚• Proposed revised text of Regulations 5237 and 5266
  - ✚• History of regulation
- ✓18. Reporter's Transcript Chief Counsel Matters, Rulemaking, October 6, 2009, Item J1

#### VERIFICATION

I, Toya P. Davis, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on November 21, 2009 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

November 21, 2009

  
Toya P. Davis  
Regulations Coordinator  
State Board of Equalization

**Final Statement of Reasons for  
Proposed Amendments to California Code of Regulations,  
Title 18, Sections:**

***5237, Board Approval Required for Refunds Over \$50,000; and  
5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for  
Oral Hearings***

Update of Information in the Initial Statement of Reasons

The specific purpose, factual basis, and rational for the original text of the proposed amendments to Regulations 5237 and 5266 are the same as provided in the Initial Statement of Reasons. On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds of taxes and fees authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The specific purpose of the original text of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5237 is to clarify that, as a result of the May 27, 2009, vote, the Board has delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny the specified refunds, without further approval from the Board Members. The specific purpose of the original text of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5266 is to clarify that, as a result of the May 27, 2009, vote, the Board has also delegated authority to Appeals Division staff to grant or deny petitions, claims for refund, and requests for relief, and cancel previously issued assessments, unless the amount granted exceeds \$100,000. The Board has determined that the original text of the proposed amendments to Regulations 5237 and 5266 are reasonably necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny the specified refunds.

The Board discussed the original text of the proposed amendments to Regulations 5237 and 5266 during a public hearing on August 31, 2009.<sup>4</sup> No interested parties asked to speak at the public hearing or submitted written comments regarding the proposed amendments.

However, the original text of the proposed amendments authorized Board staff to approve refunds and cancellations over \$50,000. Revenue and Taxation Code sections 6901, 6981, 8126, 8191, 9151, 9196, 12951, 12977, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, 46501, 46551, 50139, 50151,

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<sup>4</sup> During the public hearing, the Board also discussed a memorandum dated August 28, 2009, with Board staff, which responded to questions the Board Members raised during the May 27, 2009, Board meeting regarding: (1) the types of records Board staff reviews and the types of procedures Board staff follows in approving refunds; (2) the statutes requiring public records of the Board's decisions to grant refunds and cancellations; (3) the type of public record Board staff would use for the newly delegated refunds and cancellations; and (4) the confidential taxpayer information that may be disclosed in the public records. The memorandum did not have a direct bearing on the original text of the proposed amendments to Regulations 5237 or 5266.

55221, 55281, 60521, and 60581 require the Board to make a public record of decisions to grant refunds, credits, and cancellations over \$50,000 available for at least 10 days before the decisions are effective. Also, Revenue and Taxation Code section 45801 requires the Board to make a public record of decisions to cancel amounts over \$15,000, which were determined under the Integrated Waste Management Fee Law, available for at least 10 days before the decisions are effective.

Therefore, the Board did not adopt the original text of the proposed amendments at the August 31, 2009, public hearing. Instead, the Board determined that sufficiently related changes were reasonably necessary to ensure that Board staff complies with the statutory public record requirements. The Board also referred the original text of the proposed amendments to Regulations 5237 and 5266 to the 15-day file and directed staff to add language for the specific purpose of incorporating the public record requirements.

Board staff made sufficiently related changes to the original text of the proposed amendments to Regulations 5237 and 5266, which incorporated the statutory public record requirements, and issued a new notice of action regarding the sufficiently related changes on September 18, 2009. Then, the Board accepted comments regarding the sufficiently related changes from September 18, 2009, through the end of the second public hearing on October 6, 2009.

Finally, the Board considered and voted to adopt the original text of the proposed amendments to Regulation 5237 and 5277 with the sufficiently related changes during the October 6, 2009, public hearing.<sup>5</sup> No interested parties asked to speak at the public hearing on October 6, 2009, or submitted written comments regarding the sufficiently related changes to the original text of the proposed amendments.

The Board has determined that the proposed amendments, including the sufficiently related changes, to Regulations 5237 and 5266 will not have a significant adverse economic impact on business.

#### No Mandate on Local Agencies or School Districts

The Board has determined that the proposed amendments to Regulations 5237 and 5266, including the sufficiently related changes, do not impose a mandate on local agencies or school districts.

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<sup>5</sup> During the second public hearing, the Board also discussed a flowchart and a September 21, 2009, memorandum, with Board staff. The memorandum contained background information regarding the enactment and scope of the statutory public record requirements, and a recommendation for Board staff's future compliance with the public record requirements for the newly delegated refunds, including a draft public record; and the flowchart showed the levels of managerial approval required for refunds. The September 21, 2009, memorandum and the flow chart are available at [http://www.boe.ca.gov/meetings/pdf/Item\\_J1\\_100609.pdf](http://www.boe.ca.gov/meetings/pdf/Item_J1_100609.pdf). The memorandum and flowchart did not have a direct bearing on the original text of the proposed amendments to Regulations 5237 or 5266 or the sufficiently related changes.

### Response to Public Comment

On August 31, 2009, the Board held a public hearing on the original text of the proposed amendments to Regulations 5237 and 5266. On October 6, 2009, the Board held a second public hearing on the sufficiently related changes to the original text of the proposed amendments. No interested parties asked to speak at either public hearing and no written comments were received.

### Alternatives Considered

By its motion, the Board determined that no alternative to the proposed amendments to Regulations 5237 and 5266 with the sufficiently related changes would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed amendments.

### No Federal Mandate

The adoption of the proposed amendments, including the sufficiently related changes, was not mandated by federal statutes or regulations and there is no federal regulation that is similar to Regulation 5237 or 5266.

**Updated Informative Digest for  
Proposed Amendments to California Code of Regulations,  
Title 18, Sections:**

***5237, Board Approval Required for Refunds Over \$50,000; and  
5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for  
Oral Hearings***

**Current Law**

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.



The Board previously delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceeded \$50,000. The Board previously delegated authority to the Executive Director to grant refunds of duplicate or erroneous electronic funds transfers in excess of \$50,000, which are authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. The Board also previously delegated authority to staff in the Appeals Division of the Board's Legal Department to grant or deny petitions, refunds, and requests for relief (collectively "appeals"), and cancel previously assessed taxes and fees, unless the amounts at issue exceeded \$50,000.

California Code of Regulations, title 18, section (Regulation) 5237 prescribes the limits of the Board's prior delegations of authority to the Executive Director and Board staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. Regulation 5237, subdivisions (a) and (f), explain that Sales and Use Tax Department and Property and Special Taxes Department staff's decisions to grant or deny refunds in excess of \$50,000 must be submitted to the Board Members for approval. Regulation 5237, subdivision (d), explains that the Executive Director must approve refunds of duplicate or erroneous electronic funds transfers that exceed \$50,000.

Regulation 5266, subdivision (f), prescribes the limits of the Board's prior delegation of authority to Appeals Division staff to grant or deny appeals and cancel previously assessed taxes and fees when authorized by Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. Regulation 5266, subdivision (f), explains that Appeals Division staff's decisions to grant or deny appeals must be submitted to the Board Members for approval if the amount granted exceeds \$50,000.

### Proposed Amendments

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The Board also directed Board staff to amend the Board's regulations to incorporate the new delegation.<sup>1</sup>

The Board expanded the authority delegated to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 because the \$50,000 limit on the Board's prior delegation of authority to Board staff had not been revised to reflect inflation occurring over the last 20 years since the limit was first imposed. The Board also expanded the authority delegated to Board staff so that the Board can process refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 more quickly and efficiently, and reduce the credit interest paid on such refunds.

The purpose of the proposed amendments to Regulation 5237, subdivisions (a), (d), and (f), is to clarify that the Board has delegated authority to staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, that do not exceed \$100,000, including refunds of duplicate or erroneous electronic funds transfers, without further approval from the Board Members. The purpose of the proposed amendments to Regulation 5266, subdivision (f), is to clarify that the Board has also delegated authority to Appeals Division staff to grant or deny appeals, and cancel previously assessed taxes, where the amount granted does not exceed \$100,000. The proposed amendments to Regulation 5237 and 5266 are necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny refunds, decide appeals, and cancel prior assessments.

### August 31, 2009, Public Hearing

The Board held a public hearing to consider the original text of the proposed amendments to Regulation 5237 and 5266 in Room 121, 450 N Street, Sacramento, California, on August 31, 2009.<sup>2</sup> No interested parties asked to speak at the public hearing or submitted written comments on the proposed amendments.

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<sup>1</sup> The Board also voted to delegate authority to Board staff to grant or deny refunds of the Private Railroad Car Tax authorized by Revenue and Taxation Code section 11551, unless the refunds exceed \$100,000. However, Regulations 5237 and 5266 are not being amended as a result of the delegation of authority to grant or deny refunds of Private Railroad Car Tax because neither regulation applies to such refunds.

<sup>2</sup> During the public hearing, the Board Members also discussed a memorandum dated August 28, 2009, with Board staff, which responded to questions the Board Members raised during the May 27, 2009, Board meeting regarding: (1) the types of records Board staff reviews and the types of procedures Board staff follows in approving refunds; (2) the statutes requiring public records of the Board's decisions to grant

However, the original text of the proposed amendments to Regulations 5237 and 5266 authorized Board staff to approve refunds and cancellations over \$50,000. And, Revenue and Taxation Code sections 6901, 6981, 8126, 8191, 9151, 9196, 12951, 12977, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, 46501, 46551, 50139, 50151, 55221, 55281, 60521, and 60581 require the Board to make a public record of decisions to grant refunds, credits, and cancellations over \$50,000 available for at least 10 days before the decisions are effective. Also, Revenue and Taxation Code section 45801 requires the Board to make a public record of decisions to cancel amounts over \$15,000, which were determined under the Integrated Waste Management Fee Law, available for at least 10 days before the decisions are effective.

Therefore, at the conclusion of the public hearing, the Board determined that further amendments to Regulations 5237 and 5266 were reasonably necessary to ensure that Board staff complied with the statutory public record requirements for the newly delegated refunds and cancellations. The Board also referred the original text of the proposed amendments to Regulations 5237 and 5266 to the 15-day file and directed staff to add language for the specific purpose of incorporating the public record requirements for refunds and cancellations.

#### Sufficiently Related Changes

Sufficiently related changes were made to the original text of the proposed amendments to Regulations 5237 and 5266 to incorporate the public record requirements under Government Code section 11346.8, subdivision (c)(2). The original text of the proposed amendments with the sufficiently related changes clearly indicated was made available to the public for additional comments on September 18, 2009, and comments were accepted until the second public hearing on October 6, 2009.

#### October 6, 2009, Public Hearing

On October 6, 2009, the Board held a second public hearing and voted to adopt the original text of the proposed amendments with the sufficiently related changes.<sup>3</sup> No interested parties asked to speak at the public hearing or submitted written comments regarding the sufficiently related changes to the proposed amendments.

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refunds and cancellations; (3) the type of public record Board staff would use for the newly delegated refunds and cancellations; and (4) the confidential taxpayer information that may be disclosed in the public records.

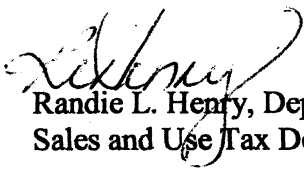
<sup>3</sup> During the second public hearing, the Board also discussed a flowchart and a September 21, 2009, memorandum, with Board staff. The memorandum contained background information regarding the enactment and scope of the statutory public record requirements, and a recommendation for Board staff's future compliance with the public record requirements for the newly delegated refunds, including a draft public record; and the flowchart showed the levels of managerial approval required for refunds. The September 21, 2009, memorandum and the flow chart are available at [http://www.boe.ca.gov/meetings/pdf/Item\\_J1\\_100609.pdf](http://www.boe.ca.gov/meetings/pdf/Item_J1_100609.pdf).

There are no comparable federal regulations or statutes to Regulation 5237 or 5266 or the proposed amendments to the regulations, including the sufficiently related changes.

# Memorandum

**To:** Mr. Ramon J. Hirsig  
Executive Director

**Date:** May 7, 2009

**From:**   
Randie L. Henry, Deputy Director  
Sales and Use Tax Department

**Subject:** Revised Proposal to Raise the Threshold for Board Member  
Approval of Refunds in Excess of \$50,000

Your approval is requested to place the following revised item on "P. Other Administrative Matters" Agenda under section "3. Sales and Use Tax Deputy Director's Report" for the May 28, 2009 Board Meeting:

- P3 – Issue Paper 08-014: Proposal to Raise the Threshold for Board Member Approval of Refunds in Excess of \$50,000

Mr. David Gau and I will present the paper recommending that the threshold for Board Member approval be raised to \$100,000. This item will require action by the Board. With your approval, the Board Proceedings Division will place this item on the Public Agenda Notice under the Deputy Director's Report and provide a copy of the attachment to each Board Member.

RLH:mj

Attachment: Issue Paper 08-014

cc Ms. Diane Olson (MIC 81)  
Mr. David J. Gau (MIC 63)

Approved: 

Ramon J. Hirsig, Executive Director

Issue Paper Number 08-014



BOARD OF EQUALIZATION  
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☒ Other

## Proposal to Raise the Threshold for Board Member Approval of Refunds in Excess of \$50,000

### I. Issue

The Board's current delegation of authority to staff of issuing refunds is set at amounts of \$50,000 or less.<sup>1</sup> Board Member approval is currently required for refunds greater than \$50,000 (including credit interest). In addition to refunds, this approval threshold also applies to credits, cancellations and denials (hereafter, for ease of expression, collectively referred to as refunds). This issue paper addresses the following question: Should the \$50,000 threshold for Board Member approval be increased or eliminated to reduce or eliminate the number of refund items presented to the Board for approval by delegating the approval for these items to staff? These items appear on the Board Meeting agenda as "Nonappearance Matters, Matters for Consideration" and "Credits, Cancellations and Refund Matters."

### II. Alternative 1 – Staff Recommendation

Staff proposes an increase in delegation authority from \$50,000 to \$100,000<sup>2</sup> and recommends:

- Approval of amendments to Regulation 5237 of the Board of Equalization's (BOE) Rules for Tax Appeals to raise the Board Member approval threshold on claims for refund to \$100,000 (see Exhibit 6).
- A public record of refunds granted above \$50,000 be maintained in the Board Proceedings Division, since various statutes under the Sales and Use Tax Law and Property and Special Taxes Laws (see Exhibit 2 for a list of sections) require that a public record be maintained with respect to any refunds in excess of \$50,000.

This alternative will reduce the number of cases requiring Board approval by approximately 34%. This change would also allow claimants to receive their refunds up to three months earlier on approved claims of \$100,000 or less and reduce staff hours spent preparing those cases for Board calendar. The reduced time frame would result in a savings of credit interest paid by the State on approved refunds. Considering the increases in sales and use tax rates and the rate of inflation since the \$50,000 threshold was established in 1989, staff believes \$100,000 is an appropriate level.

<sup>1</sup> As explained below, the current \$50,000 threshold applies to all tax and fee programs the BOE administers except the Private Railroad Car Tax, for which no delegation of authority presently exists.

<sup>2</sup> Or, in the case of the Private Railroad Car Tax program, from \$0 to \$100,000 (see footnote 1, above). For ease of expression, all future threshold references will be to the typical \$50,000 threshold.

### III. Other Alternatives Considered

#### **Alternative 2 – Increase Approval Threshold to \$250,000**

Staff alternatively proposes an increase in delegation authority from \$50,000 to \$250,000, which would include:

- Adoption of amendments to the BOE's Rules for Tax Appeals to raise the Board Member approval threshold on claims for refund to \$250,000.
- Retention of a public record on those items above \$50,000 by the Board Proceedings Division, since various statutes under the Sales and Use Tax Law and Property and Special Taxes Laws regarding refunds require that a public record be maintained with respect to any refunds granted in excess of \$50,000.

This alternative would reduce the number of cases requiring Board approval by approximately 68%. This change would allow claimants to receive their refunds up to three months earlier on approved claims of \$250,000 or less, resulting in a credit interest savings even greater than in Alternative 1. There would also be a greater reduction in the number of cases brought before the Board and the related number of staff hours spent preparing those cases for Board calendar.

#### **Alternative 3 – Delegate Board Member Approval Requirement to Staff**

Staff alternatively proposes that staff be granted the delegation of authority to issue all refunds without Board Member approval, which would include:

- Deletion of the BOE's Rules for Tax Appeals, Regulation 5237, *Board Approval Required for Refunds over \$50,000*, to eliminate the Board Member approval threshold.
- Retention of a public record on those items above \$50,000 by the Board Proceedings Division, since various statutes under the Sales and Use Tax Law and Property and Special Taxes Laws regarding refunds require that a public record be maintained with respect to any refunds granted in excess of \$50,000.

This alternative would eliminate the requirement for Board Member approval on all refunds. This change would allow claimants to receive their refunds up to three months earlier on approved claims of any amount, resulting in a credit interest savings even greater than in Alternative 1 and 2. The cases brought before the Board and the related number of staff hours spent preparing those case summaries for Board calendar would be eliminated.

#### **Alternative 4 – Make No Change**

Do not change the current requirement that Board Members approve claims for refund in excess of \$50,000. Under this alternative, the BOE would not realize any of the savings estimated from increasing the approval threshold.

Issue Paper Number 08-014

#### **IV. Background**

As initially introduced, AB 3069 (Stats. 1994, Ch. 726) eliminated the requirement that the Board of Control (now named the Victim Compensation and Government Claims Board) review the BOE's and the Franchise Tax Board's (FTB) settlement agreements and refunds, credits, and cancellations of liabilities over \$50,000. In exchange, the legislation required that such matters be made available as a public record 10 days prior to the effective date of these determinations.

However, unlike the BOE, FTB is not required to make any of its refunds a matter of public record. This requirement was deleted from AB 3069 before it was enacted, after the FTB expressed concerns regarding the 10-day public notice requirement.

FTB's analysis of the introduced version of AB 3069, which also imposed the 10-day public record requirement on FTB, questioned the need for a public record and pointed out that neither the Board of Control nor the public can technically prevent the issuance of a refund or obtain any additional information about the refund. Therefore, FTB indicated that both the Board of Control's oversight process, as well as the 10-day public notice required by AB 3069 (as introduced), served little useful purpose and was an improper disclosure of taxpayers' confidential tax information. In response to FTB's analysis, the 10-day notice requirement was deleted as to FTB, but not as to the BOE.

Currently, FTB has internal procedures in place that provide for elevated levels of review depending on the dollar amount of the refund and the nature of the return (corporate or personal). Refunds over \$10,000 require an additional level of review, and refunds over \$50,000 receive further levels of review.

In the Sales and Use Tax Law, Revenue and Taxation Code section 6901, *Credits and refunds*, provides in the final sentence of subdivision (c):

“Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.”

The same public record requirement for cancellations is found in Revenue and Taxation Code section 6981. Currently, to satisfy this requirement, claims for refund in excess of \$50,000, placed on either the BOE's Adjudicatory or Consent calendar for Board Member approval, are made available when the Public Agenda Notice is distributed 10 days before the meeting. The approval process for these refunds is also explained in the BOE's Rules for Tax Appeals, Regulation 5237, *Board Approval Required for Refunds over \$50,000*.

Similar sections of the law exist for all Property and Special Taxes programs, requiring refunds in excess of \$50,000 be available as a public record for at least 10 days prior to the effective date of the Board's determination. (See Rev. & Tax. Code, § 11551.) One exception is the Private Railroad Car Tax (PRCT), which requires refunds in excess of \$15,000 be available as a public record for at least 10 days in advance of the effective date of the determination. Additionally, the PRCT has not historically been included in any delegation considerations; and consequently, the program requires all of its refunds be approved by the Board Members, regardless of the amount. As indicated above, staff is unaware of any persuasive reason for the disparate treatment of the PRCT program with regard to the delegation of authority and recommends that the PRCT program no longer be subject to such disparate treatment.



The Board has the authority to delegate authority to staff pursuant to Revenue and Taxation Code section 7, which provides:

“Whenever a power is granted to, or a duty imposed on, any person or board by any provision of this code, it may be exercised or performed by any deputy or person authorized by the person or board to whom the power is granted or on whom the duty is imposed, unless it is expressly provided that the power or duty shall be exercised or performed only by the person or board to whom the power is granted or on whom the duty is imposed.”

AB 3083 (Stats. 1988, Ch. 1029) amended the Revenue and Taxation Code to increase the dollar amount of refund that required Board of Control’s approval from amounts over \$15,000 to amounts over \$50,000. Consequently, on November 6, 1988, the Board increased the authority of staff to approve refunds, adjustments, denials, credits, and cancellations to the \$50,000 level, effective January 1, 1989 (as explained previously, the requirement for Board of Control approval was eventually eliminated in 1994).

On September 1, 1999, an issue paper was brought before the Board recommending a delegation of authority to the Executive Director for approving all refunds of Electronic Fund Transfer (EFT) overpayments for Sales and Use Tax Department (SUTD) and Special Taxes Programs due to errors or duplicate payments. This delegation was approved by the Board Members.

On June 25, 2003, the Board Chair requested a review of Consumer Use Tax cancellations that reduced the liability to zero. This was to ensure a taxpayer’s privacy was protected when a tax was found not to be due. At the same time, staff brought forward a recommendation to reduce the number of Consent Items on the Board Calendar by increasing the current level of delegation from \$50,000 to \$250,000 for all cases brought before the Board. These cases may include refunds, credits, cancellations, redeterminations and relief of penalties. The Board did not approve staff’s recommendation to increase the delegation of authority but did adopt staff’s recommendation to delegate the authority to cancel (or redetermine to zero) all individual billings on vehicles, vessels and aircraft when tax is found not to be due. Currently, the public notice process includes sending Board Proceedings a copy of Consumer Use Tax billing cancellations at least 10 days prior to the effective date of these determinations. Board Proceedings maintains these documents in a binder. It is available to the public upon request.

The processing of SUTD claims for refund is coordinated by the staff in the Audit Determination and Refund Section. Claims may be verified by refund staff in Headquarters, or may be referred to a field office for investigation. If the claimant has an audit in process during the period of the claim for refund, SUTD refund staff will refer the claim to the district office. The processing of Property and Special Taxes Department (PSTD) claims for refund are handled internally by refund staff within each division. Claims are verified by refund staff within PSTD. If the claimant has an audit in process during the period of the claim for refund, the refund request will be included as part of the audit.

In general, these procedures benefit the taxpayer by allowing offsetting interest at the debit rate rather than providing interest at the lower credit rate. Summaries are prepared for claims for refund and concurred audits resulting in a net credit in excess of \$50,000 (including interest and penalty) and are placed on the next available Consent or Adjudicatory Calendar for approval by the Board Members. The Adjudicatory and Consent Calendars are generally for concurred items between claimant and staff. For example, there still may be nonconcurrent portions of an audit or claim for refund, but these items would generally be in the appeals process and not on the Adjudicatory or Consent Calendar. If the claimant and

staff disagree with the results, the claimant retains all appeal rights and can pursue his/her contentions before the Board Members or in the civil courts, as appropriate.

With respect to general workload, there has been an increase in refund cases in excess of \$50,000. One cause of this increase is due to passage of AB 599, which is the January 2001 Sales and Use Tax Law change that allows lenders to file credit returns for bad debts written off in their records for sales made by retailers who sold the receivables and the right to claim the bad debts to the lenders. This law change alone has resulted in a substantial increase in the amount of SUTD claims for refund in excess of \$50,000. For example, during Fiscal Year (FY) 2007/2008, there were 75 refunds of this type exceeding \$50,000, representing nearly 20% of the cases placed on the Adjudicatory and Consent Calendars (see Exhibit 3). These credit returns are filed on a routine basis by lenders and are placed on the Board's Consent Calendar for approval. Each of these permit holders is selected for audit on a three-year basis; thus, the claimed refund amounts that are approved by the Board are later reviewed and verified by audit. Upon audit, to the extent a refund granted is found to be overstated, SUTD issues a deficiency determination to recover the overstated amount pursuant to Revenue and Taxation Code section 6961, subdivision (b).

## **V. Discussion**

Staff is seeking Board approval to increase the current level of delegation of authority for refunds presented to the Board for approval. This will streamline the BOE's refund procedures by allowing staff to process claims up to three months earlier than with the current process.

**Claim Processing Procedures.** The process of preparing a claim for refund in excess of \$50,000 begins in Headquarters up to four months prior to the Board Meeting. PSTD and SUTD auditors prepare Board Summaries for recommended refunds that are reviewed and approved for further processing by their respective Refund Section supervisors. A supervisor or designated reviewer personally reviews every refund in excess of \$5,000 (tax and credit interest). This approval is entered in the IRIS refunds subsystem. A refund cannot be released to the State Controller's Office without this approval. The approver is identified within the system. In addition to these controls, the section supervisor or designated reviewer reviews all refunds, credits, cancellations and denials in excess of \$50,000. A credit is a claim item that is granted but offset against another liability. Staff has confirmed with the BOE's Internal Security and Audit Division (ISAD) that, if the current claim processing procedures are maintained, increasing or eliminating the threshold would not compromise the integrity of the refund process. To ensure there is adequate review before the summaries are forwarded to the Board Proceedings Division, summaries are due to the Refund Coordinator approximately two months (for Fuel Taxes and Environmental Fees) to three months (for Excise Taxes and Sales and Use Taxes) prior to the appropriate Board Meeting. For example, SUTD summaries for the September 16, 2008 meeting were due on June 18<sup>th</sup>.

Summaries are subsequently forwarded to the respective Department Petitions staff to combine with the entire Sales and Use Tax or Property and Special Taxes Calendar. The deadline for forwarding the completed summaries to the Petitions staff is approximately ten weeks prior to the Board meeting. The summaries are compiled and forwarded for review and recommended changes to the appropriate Division Chief and the Assistant Chief Counsel of the Tax and Fee Programs Division. PSTD summaries are also reviewed by the Deputy Director of PSTD. The Petitions Sections deliver the SUTD and PSTD portions of the calendar to Board Proceedings forty-five days prior to the scheduled Board meeting. Since the time frame between Board meetings may exceed one month, it is possible that a refund that just missed a prior deadline will wait an additional month before being heard for Board Member approval.

After Board approval of a refund item, the Refund Coordinators in SUTD and PSTD send their refund schedule to Accounting, which forwards the schedule to the State Controller's Office. Claimants usually receive their refund checks within two weeks of the Board meeting.

**Comparison of 1989 and 2008 dollar levels.** The current threshold for refunds requiring Board Member approval is \$50,000, including credit interest. As explained in the Background section, this threshold was last increased in January 1989. Support for increasing the approval threshold can be seen by comparing the effect of the increase in the average sales tax rate of 6.5% in 1989 to 8% in 2008.

Considering the increase in the average sales tax rate, the Board reviewed claims in 2008 that had a lower measure than claims in 1989. In 1989, a refund claim of \$50,000 in tax would have had a taxable measure of \$769,231. In 2008, a refund claim of \$50,000 would have had a taxable measure of only \$625,000. This represents a 19% difference resulting solely from an increase in the tax rate. Due to the 1% tax rate increase on April 1, 2009, the measure amounts that will require Board approval are even lower.

	Refund	Tax Rate	Measure (Refund/Tax Rate)
1989	\$50,000	6.5%	\$769,231
2008	50,000	8%	625,000
2009	50,000	9%	555,556
Difference 2008 vs. 1989			\$144,231
% Difference (\$144,231/\$769,231)			19%
Difference 2009 vs. 1989			\$213,675
% Difference (\$213,675/\$769,231)			28%

Adjusting for inflation, the difference is even greater: Taxable measure of \$769,231 in 1989 equates to \$1,357,200 in measure in 2008 (see Exhibit 4). Using the average tax rate of 8%, tax on \$1,357,200 is \$108,576, which is substantially equivalent to the \$100,000 threshold recommended by staff.

Similarly, there have been significant changes in tax and fee rate structures for many PSTD programs since 1989, as well. Changes in tax rates have been driven by voter initiatives (Cigarette and Tobacco Products taxes), legislation, and by other state agencies for which the BOE collects fees to fund programs and operations. Often changes in fees are increased or adjusted based on changes in the Consumer Price Index.

Staff proposes that Rules for Tax Appeals Regulation 5237, *Board Approval Required for Refunds over \$50,000*, be revised to establish a threshold other than \$50,000. However, consistent with various statutes, a public record of all refunds over \$50,000 must continue to be maintained. Staff proposes that a public record on those items above \$50,000 be maintained in the Board Proceedings Division. A statutory change would be required to eliminate the public record requirement for claims over \$50,000, or to raise the threshold for that public record requirement.

## VI. Alternative 1 - Staff Recommendation

### A. Description of Alternative 1

Staff proposes an increase in delegation authority from \$50,000 to \$100,000 and recommends approval of amendments to the BOE's Rules for Tax Appeals to raise the Board Member approval threshold on claims for refund from \$50,000 to \$100,000. Since various statutes under the Sales and Use Tax Law and Property and Special Taxes Laws (see Exhibit 2 for a list of sections) require that a public record be maintained with respect to any refund in excess of \$50,000, staff also proposes that public records for those items above \$50,000 be maintained in the Board Proceedings Division at least 10 days in advance of the effective date of the determinations.

This alternative will reduce the number of cases requiring Board approval by approximately 34%. This change would also allow claimants to receive their refunds up to three months earlier on approved claims of \$100,000 or less and would reduce staff hours spent preparing those cases for Board calendar. In addition, the time savings result in a savings of credit interest paid by the State on approved refunds. Considering the increases in sales and use tax rates and the rate of inflation since the \$50,000 threshold was established in 1989, staff believes \$100,000 is an appropriate level.

As shown in Exhibit 5, in FY 2007/2008, 404 refunds in excess of \$50,000 were prepared by SUTD and PSTD equating to a dollar figure of \$183,011,934.<sup>3</sup> If the approval threshold had been at \$100,000, 136 of these cases would not have required summary preparation. The dollar figure for these cases amounts to \$9,769,198. Refunds for these cases would have been granted up to three months earlier resulting in an estimated credit interest savings to the State of \$73,269 (see Exhibit 1). Under this proposal, the Board would still have approved \$173,242,736 in refunds for the 268 items in excess of \$100,000. In dollars, this represents over 95% of the refunds (see Exhibit 5).

In addition to credit interest savings, there would also be a savings of staff hours. Board summaries related to these refunds can require several hours of staff time. After preparation of the summary by the auditor, there are added layers of staff and management review, such as the Refund Coordinator, Petitions Section, Division Chief, Assistant Chief Counsel, Department Deputy Director, Board Proceedings Division, and individual Board Member staff. Raising the threshold for Board Member approval would save hundreds of staff hours preparing these summaries for Board Calendar (see Operational Impact on the next page) while still maintaining the same internal processing and approval level of review.

### B. Pros of Alternative 1

- Allows claimants to receive their refunds up to three months earlier.
- The State saves credit interest (estimated at \$73,269 in FY 2007/2008).
- Reduces the number of cases requiring Legal Department and Board Member review.
- Substantially decreases staff workload in preparing summaries for Board Calendar.
- Creates consistency for Board Member approval of refunds between SUTD and PSTD.
- Reduces the redundancy of summary reviews while maintaining sufficient supervisor and management review.

<sup>3</sup> It should be noted that *denials* of refunds in excess of \$50,000 would also be affected by raising the threshold. The process of preparing summaries of denied refund claims for the Board's Consent and Adjudicatory Calendars is generally much less extensive. Accordingly, staff has not included claims that were denied and placed on the Board's Consent Calendar in these savings calculations.

**C. Cons of Alternative 1**

- Board Members will no longer be required to approve staff recommendations on refunds under \$100,000.

**D. Statutory or Regulatory Change for Alternative 1**

No statutory change is required. However, staff's recommendation requires the amendment of Regulation 5237, *Board Approval Required for Refunds over \$50,000*. A proposed revision to Regulation 5237 is attached (Exhibit 6).

**E. Operational Impact of Alternative 1**

Multi-level reviews of Board summaries would be eliminated for refund cases ranging from \$50,001 to \$100,000 while maintaining the integrity of the refund process. These reviewers include the Refund Coordinator; Petitions Section staff; the appropriate Division Chief; the Department Deputy Director; the Assistant Chief Counsel of the Tax and Fee Programs Division; Board Proceedings Division; and individual Board Member staff. It is conservatively estimated that in addition to each Division's Refund staff's initial preparation of the summary, up to five additional hours are spent in the above review process. Based on the number of summaries prepared in FY 2007/2008 on claims ranging from \$50,001 to \$100,000, this represents up to 680 hours expended in preparing cases for the Consent or Adjudicatory Calendars (136 cases x 5 hours).

**F. Administrative Impact of Alternative 1**

**1. Cost Impact**

The workload associated with publishing the amended regulation is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

**2. Revenue Impact**

There would be a savings in credit interest paid on these refunds. For Fiscal Year 2007/2008, this is estimated at \$73,269 (see Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 1**

Taxpayers with approved refunds between \$50,001 and \$100,000 would receive payment up to three months earlier than if their claim went through the Board Member approval process.

**H. Critical Time Frames of Alternative 1**

Implementation will take place 30 days following approval of the amended regulation by the Office of Administration Law.

**VII. Alternative 2 – Increase Approval Threshold to \$250,000**

**A. Description of Alternative 2**

Staff alternatively proposes an increase in delegation from \$50,000 to \$250,000, which would include adoption of amendments to the BOE's Rules for Tax Appeals to raise the Board Member approval threshold on claims for refund to \$250,000. Since various statutes under the Sales and Use Tax Law and Property and Special Taxes Laws regarding refunds require that a public record be maintained

with respect to any refunds in excess of \$50,000, this proposal also requires that a public record on those items above \$50,000 be maintained in the Board Proceedings Division at least 10 days in advance of the effective date of the determinations.

This alternative will reduce the number of cases requiring Board approval by approximately 68%. This change would allow claimants to receive their refunds up to three months earlier on approved claims of \$250,000 or less, resulting in a credit interest savings even greater than in Alternative 1. There would also be a greater reduction in the number of cases brought before the Board and the related number of staff hours spent preparing those summaries for Board calendar. Raising the threshold to \$250,000 would go considerably beyond adjusting the current \$50,000 threshold for the increases in sales and use tax rates and the rate of inflation.

If the approval threshold on refund cases had been increased to \$250,000, 129 SUTD and PSTD claims would have been placed on the Board Calendar in FY 2007/2008 (see Exhibit 5). Under this alternative, 275 SUTD and PSTD refunds between \$50,001 and \$250,000 would have been granted up to three months earlier resulting in an estimated savings to the State of \$251,757 in credit interest (see Exhibit 1).

During FY 2007/2008, the Board granted \$183,011,934<sup>4</sup> in SUTD and PSTD refunds from the Adjudicatory and Consent Calendars. If the threshold that year were \$250,000, the Board would have still approved \$149,444,388 in refunds based on the remaining 129 refund cases in excess of \$250,000. In dollars, this represents 82% of the refund amounts (see Exhibit 5).

## **B. Pros of Alternative 2**

- Allows claimants to receive their refunds up to three months earlier.
- The State saves credit interest (estimated at \$251,757 in FY 2007/2008).
- Reduces the number of cases requiring Legal Department and Board Member reviews.
- Substantially decreases staff workload in preparing summaries for Board Calendar.
- Creates consistency for Board Member approval of refunds between SUTD and PSTD.
- Reduces the redundancy of summary reviews while maintaining sufficient supervisor and management review.

## **C. Cons of Alternative 2**

- Board Members will no longer be required to approve staff recommendations on refunds under \$250,000.

## **D. Statutory or Regulatory Change for Alternative 2**

No statutory change is required. However, this alternative does require the amendment of Regulation 5237, *Board Approval Required for Refunds over \$50,000*. A proposed revision to Regulation 5237 is attached (Exhibit 7).

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<sup>4</sup> It should be noted that *denials* of refunds in excess of \$50,000 would also be affected by raising the threshold. The process of preparing summaries of denied refund claims for the Board's Consent and Adjudicatory Calendars is generally much less extensive. Accordingly, staff has not included claims that were denied and placed on the Board's Consent Calendar in these savings calculations.

### **E. Operational Impact of Alternative 2**

Multi-level reviews of Board summaries would be eliminated for refund cases ranging from \$50,001 to \$250,000 while maintaining the integrity of the refund process. These reviews include the Refund Coordinator; Petitions Section staff; the appropriate Division Chief; the Department Deputy Director; the Assistant Chief Counsel of the Tax and Fee Programs Division; Board Proceedings Division; and individual Board Member staff. It is conservatively estimated that in addition to Refund staff's initial preparation of the summary, up to 5 additional hours are spent in the above review process. Based on the number of summaries prepared in FY 2007/2008 on claims ranging from \$50,001 to \$250,000, this represents up to 1,375 hours expended in preparing cases for the Consent or Adjudicatory Calendars (275 cases x 5 hours).

### **F. Administrative Impact of Alternative 2**

#### **1. Cost Impact**

The workload associated with publishing the amended regulation is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

#### **2. Revenue Impact**

There would be a credit interest savings to the State. For Fiscal Year 2007/2008, this is estimated at \$251,757.

### **G. Taxpayer/Customer Impact of Alternative 2**

Taxpayers with approved refunds between \$50,001 and \$250,000 would receive payment up to three months earlier than if their claim went through the Board Member approval process.

### **H. Critical Time Frames of Alternative 2**

Implementation will take place 30 days following approval of the amended regulation by the Office of Administration Law.

## **VIII. Alternative 3 – Delegate Approval Requirement to Staff**

### **A. Description of Alternative 3**

Staff alternatively proposes that staff be granted the delegation of authority to issue all refunds without Board Member approval, which would require the deletion of the BOE's Rules for Tax Appeals Regulation 5237. Since various statutes under the Sales and Use Tax Law and Property and Special Taxes Laws regarding refunds require that a public record be maintained with respect to any refunds in excess of \$50,000, staff also proposes that a public record on those items above \$50,000 be maintained in the Board Proceedings Division at least 10 days in advance of the effective date of the determinations.

This alternative would eliminate the requirement for Board Member approval on all refunds. This change would allow claimants to receive their refunds up to three months earlier on approved claims of over \$50,000, resulting in a credit interest savings even greater than in Alternative 2. The cases brought before the Board and the related number of staff hours spent preparing those summaries for Board calendar will be eliminated.

If the Board Member approval threshold requirement on refund cases had been eliminated, no cases would have been placed on the Board's Consent and Adjudicatory Calendars in FY 2007/2008. Under this alternative, all refunds over \$50,000 would have been granted up to three months earlier resulting in an estimated credit interest savings to the State of \$1,372,590.

During FY 2007/2008, the Board granted \$183,011,934 in SUTD and PSTD refunds from the Consent and Adjudicatory Calendars.

**B. Pros of Alternative 3**

- Allows claimants to receive their refunds up to three months earlier.
- The State saves credit interest (estimated at \$1,372,590 in FY 2007/2008).
- Eliminates refund summaries requiring Legal Department and Board Member reviews.
- Eliminates staff workload in preparing summaries for Board Calendar.
- Eliminates the redundancy of summary reviews while maintaining sufficient supervisor and management review.

**C. Cons of Alternative 3**

- Board Members will no longer be required to approve staff recommendations on refunds.

**D. Statutory or Regulatory Change for Alternative 3**

No statutory change is required. However, this alternative does require the deletion of Regulation 5237, *Board Approval Required for Refunds over \$50,000*.

**E. Operational Impact of Alternative 3**

Multi-level reviews of Board summaries would be eliminated for all refund cases while maintaining the integrity of the refund process. These summary reviews include the Refund Coordinator; Petitions Section staff; the appropriate Division Chief; the Department Deputy Director; the Assistant Chief Counsel of the Tax and Fee Programs Division; Board Proceedings Division; and individual Board Member staff. It is conservatively estimated that in addition to Refund staff's initial preparation of the summary, up to 5 additional hours are spent in the above review process. Based on the number of summaries prepared in FY 2007/2008 on claims over \$50,000, this represents up to 2,020 hours expended in preparing cases for the Consent or Adjudicatory Calendars (404 cases x 5 hours).

**F. Administrative Impact of Alternative 3**

**1. Cost Impact**

The workload associated with deleting the regulation is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

**2. Revenue Impact**

There would be a credit interest savings to the State. For Fiscal Year 2007/2008, this is estimated at \$1,372,590.



### **G. Taxpayer/Customer Impact of Alternative 3**

Taxpayers with approved refunds over \$50,000 would receive payment up to three months earlier than if their claim went through the Board Member approval process.

### **H. Critical Time Frames of Alternative 3**

Implementation will take place 30 days following approval of the deletion of the regulation by the Office of Administration Law.

## **IX. Alternative 4 – Make No Change**

### **A. Description of Alternative 4**

Do not change the current requirement that Board Members approve claims for refund in excess of \$50,000. Under this alternative, the BOE would not realize any of the savings estimated from increasing the approval threshold.

### **B. Pros of Alternative 4**

Will allow the Board Members to continue to review all refund cases in excess of \$50,000.

### **C. Cons of Alternative 4**

- Claimants will continue to experience delays in receiving their refunds due to the requirements of the calendaring process for cases in excess of \$50,000.
- The State will continue to pay up to three months additional credit interest on refund cases in excess of \$50,000, or \$50,000 to \$100,000/\$250,000 on refunds that are granted at a later date.
- Based on historical trends in tax rate increases and inflation rates, the number of refunds in excess of \$50,000 will gradually increase.
- With additional tax increase and inflationary changes, additional staff resources will be incrementally expended in preparation of summaries for the Consent and Adjudicatory Calendars.

### **D. Statutory or Regulatory Change for Alternative 4**

None.

### **E. Operational Impact of Alternative 4**

None.

### **F. Administrative Impact of Alternative 4**

#### **1. Cost Impact**

None.

#### **2. Revenue Impact**

None.

**G. Taxpayer/Customer Impact of Alternative 4**

None.

**H. Critical Time Frames of Alternative 4**

None.

**Preparer/Reviewer Information**

Prepared by: Audit Determination & Refund Section

Current as of: May 7, 2009

**REVENUE ESTIMATE**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION



**BOARD OF EQUALIZATION**  
**REVENUE ESTIMATE**

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**Proposal to Raise the Threshold for Board Member Approval of Refunds  
in Excess of \$50,000**

**Alternative 1 – Staff Recommendation**

Staff proposes an increase in delegation authority from \$50,000 to \$100,000 and recommends:

- Approval of amendments to the Board of Equalization's (BOE) Rules for Tax Appeals to raise the Board Member approval threshold on claims for refund to \$100,000.
- A public record of refunds above \$50,000 be maintained in the Board Proceedings Division, since various statutes under the Sales and Use Tax Laws and Property and Special Taxes Laws require that a public record be maintained with respect to any refunds in excess of \$50,000.

This change would allow claimants to receive their refunds up to three months earlier on approved claims under \$100,000, reduce the number of cases brought before the Board, and reduce staff hours spent preparing those cases for Board calendar. The time savings also result in a savings of credit interest paid by the State on approved refunds. Considering the increases in sales and use tax rates and the rate of inflation since the \$50,000 threshold was established in 1989, staff believes \$100,000 is an appropriate level.

**Alternative 2 - Other Alternative Considered**

Staff alternatively proposes an increase in delegation authority from \$50,000 to \$250,000, which would include:

- Approval of amendments to the BOE's Rules for Tax Appeals to raise the Board Member approval threshold on claims for refund to \$250,000.
- A public record of refunds above \$50,000 be maintained in the Board Proceedings Division, since various statutes under the Sales and Use Tax Laws and Property and Special Taxes Laws require that a public record be maintained with respect to any refunds in excess of \$50,000.

This change would allow claimants to receive their refunds up to three months earlier on approved claims under \$250,000, resulting in a credit interest savings even greater than in Alternative 1. There would also be a greater reduction in the number of cases brought before the Board and the related number of staff hours spent preparing cases for Board calendar. Raising

the threshold to \$250,000 would go considerably beyond adjusting the current \$50,000 threshold for the increases in sales and use tax rates and the rate of inflation.

### **Alternative 3 – Other Alternative Considered**

Staff alternatively proposes that staff be granted the delegation of authority to issue all refunds without Board Member approval, which would include:

- Deletion of the BOE's Rules for Tax Appeals, Regulation 5237, Board Approval Required for Refunds over \$50,000, to eliminate the Board Member approval threshold.
- Retention of a public record on those items above \$50,000 by the Board Proceedings Division, since various statutes under the Sales and Use Tax Law and Property and Special Taxes Laws regarding refunds require that a public record be maintained with respect to any refunds granted in excess of \$50,000.
- This change would allow claimants to receive their refunds up to three months earlier on approved claims of any amount, resulting in a credit interest savings even greater than in Alternative 2. The cases brought before the Board and the related number of staff hours spent preparing those case summaries for Board calendar would be eliminated.

### **Alternative 4 – Make No Change**

Do not change the current requirement that Board Members approve claims for refund in excess of \$50,000. Under this alternative, the BOE would not realize any of the savings estimated from increasing the approval threshold.

## **Background, Methodology, and Assumptions**

### **Alternative 1 – Staff Recommendation: \$100,000 Threshold**

Staff proposes an increase in delegation authority from \$50,000 to \$100,000 and recommends:

- Approval of amendments to the BOE's Rules for Tax Appeals to raise the Board Member approval threshold on claims for refund to \$100,000 (see Exhibit 6).
- A public record of refunds above \$50,000 be maintained in the Board Proceedings Division, since various statutes under the Sales and Use Tax Laws and Property and Special Taxes Laws require that a public record be maintained with respect to any refunds in excess of \$50,000.

This change would cut the time needed to issue refunds on approved claims under \$100,000. This would also result in a savings of credit interest paid by the State on approved refunds.

In FY 2007/2008, 404 refunds in excess of \$50,000 were prepared by SUTD and PSTD equating to a dollar figure of \$183,011,934. If the approval threshold had been increased to \$100,000, 136 of these cases would not have required summary preparation. The dollar figure for these cases amounts to \$9,769,198. The refunds for these cases would have been granted up to three months earlier resulting in an estimated credit interest savings to the State of \$73,269 ( $\$9,769,198 \times .03 \times 3/12$ ) using a credit interest rate of 3% per annum.

### **Alternative 2 - Other Alternative Considered: \$250,000 Threshold**

Staff alternatively proposes an increase in delegation authority from \$50,000 to \$250,000, which would include:

- Approval of amendments to the BOE's Rules for Tax Appeals to raise the Board Member approval threshold on claims for refund to \$250,000.
- A public record of refunds above \$50,000 be maintained in the Board Proceedings Division, since various statutes under the Sales and Use Tax Laws and Property and Special Taxes Laws require that a public record be maintained with respect to any refunds in excess of \$50,000.

This change would cut the time to issue refunds on approved claims under \$250,000, resulting in a credit interest savings even greater than in Alternative 1.

If the approval threshold on refund cases had been increased to \$250,000, only 129 SUTD and PSTD claims would have been placed on the Board's Consent and Adjudicatory Calendars for FY 2007/2008. Under this alternative, 275 SUTD and PSTD refunds between \$50,001 and \$250,000 would have been granted up to three months earlier. The dollar figure for these cases amounts to \$33,567,546 resulting in an estimated savings to the State of approximately \$251,757 ( $\$33,567,546 \times .03 \times 3/12$ ) in credit interest using a rate of 3%.

### **Alternative 3 – Other Alternative Considered: No Threshold**

Staff alternatively proposes that staff be granted the delegation of authority to issue all refunds without Board Member approval, which would include:

- Deletion of the BOE's Rules for Tax Appeals, Regulation 5237, *Board Approval Required for Refunds over \$50,000*, to eliminate the Board Member approval threshold.
- Retention of a public record on those items above \$50,000 by the Board Proceedings Division, since various statutes under the Sales and Use Tax Law and Property and Special Taxes Laws regarding refunds require that a public record be maintained with respect to any refunds granted in excess of \$50,000.

This change would allow claimants to receive their refunds up to three months earlier on approved claims of any amount, resulting in a credit interest savings even greater than in Alternative 2.

If the Board Member approval threshold requirement on refund cases had been eliminated, no cases would have been placed on the Board's Consent and Adjudicatory Calendars in FY2007/2008. Under this alternative, all refunds over \$50,000 would have been granted up to three months earlier resulting in an estimated credit interest savings to the State of \$1,372,590 ( $\$183,011,934 \times .03 \times 3/12$ ) using a rate of 3%.

### **Alternative 4 – Make No Change**

There is nothing in Alternative 4 that would impact revenue.

### **Revenue Summary**

- Alternative 1 – staff recommendation would result in a revenue savings of \$73,269.
- Alternative 2 – staff's alternative proposal would result in a revenue savings of \$251,757.
- Alternative 3 – staff's alternative proposal would result in a revenue savings of \$1,372,590.
- Alternative 4 – this alternative does not have a revenue impact.

### **Preparation**

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Robert Ingenito, Jr., Manager, Research and Statistics Section, Legislative and Research Division, and Mr. Jeff McGuire, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of April 15, 2009.

**Revenue and Taxation Code Sections Relating to Refunds of  
BOE-Administered Tax and Fee Programs**

<b>Tax/Fee Program</b>	<b>Revenue and Taxation Code Section</b>
Sales and Use Tax	6901
Motor Vehicle Fuel Tax	8126
Use Fuel Tax	9151
Private Railroad Car Tax	11551
Insurance Tax	12977
Cigarette and Tobacco Products Tax	30361
Alcoholic Beverages Tax	32401
Timber Tax	38601
Energy Users Surcharge	40111
Emergency Telephone Users Surcharge	41100
Natural Gas Users Surcharge	55221
Tire Recycling Fee	55221
Electronic Waste Recycling Fee	55221
Ballast Water Fee	55221
Water Rights Fee	55221
Childhood Lead Fee	43451
Environmental Fee	43451
Occupational Lead Fee	43451
Hazardous Substances	43451
Integrated Waste Management Fee	45651
Oil Spill Surcharge	46501
Underground Storage Tank Fee	50139
Diesel Fuel Tax	60521

**SUTD Refund Claims Requiring Board Approval - Bad Debt Lenders  
FY 2007/2008**

	Board Meeting Date	#Cases in Excess of \$50,000	Dollar Value	#Cases from Bad Debt Lenders	Dollar Value
1	7/17/07	20	\$ 15,367,699	3	\$ 4,425,797
2	8/14/07	34	25,212,040	5	3,796,399
3	9/11/07	42	20,079,482	12	9,053,583
4	10/02/07	19	6,354,457	2	760,513
5	10/23/07	18	10,257,202	3	4,724,177
6	11/14/07	25	13,315,230	4	3,602,811
7	12/11/07	36	12,369,659	6	3,497,441
8	01/31/08	46	13,376,598	11	3,706,137
9	02/26/08	25	11,567,276	4	4,329,132
10	03/18/08	20	4,571,322	7	1,547,233
11	04/08/08	16	2,375,927	3	571,125
12	05/13/08	33	16,783,816	9	5,482,981
13	05/28/08	13	6,757,437	0	0
14	06/24/08	31	5,568,737	6	1,452,585
Totals		378	\$163,956,882	75	\$46,949,914

Percentage of the number of refund cases related to bad debt lenders:  $75 \div 378 = 20\%$



### Estimated Threshold Adjusted for Inflation and Changes in Tax Rates

Measure for \$50,000 tax in 1989 using 6.5% tax rate ( $\$50,000 / .065$ ): \$769,231

Amount of tax in 2008 using 1989 measure and 2008 average tax rate of 8%  
( $\$769,231 \times .08$ ): \$61,538

Adjustment for inflation using US Bureau of Labor Statistics inflation calculator at  
<http://data.bls.gov/cgi-bin/cpicalc.pl>.

	\$61,538 tax adjusted for inflation	Related measure (adjusted tax ÷ 8%)
1990	\$ 64,863	\$ 810,788
1991	67,593	844,913
1992	69,627	870,338
1993	71,712	896,400
1994	73,548	919,350
1995	75,632	945,400
1996	77,865	973,313
1997	79,652	995,650
1998	80,893	1,011,163
1999	82,679	1,033,488
2000	85,458	1,068,225
2001	87,890	1,098,625
2002	89,280	1,116,000
2003	91,314	1,141,425
2004	93,746	1,171,825
2005	96,922	1,211,525
2006	100,049	1,250,613
2007	102,898	1,286,225
2008	108,576	1,357,200

**Analysis of SUTD and PSTD Refund Claims Requiring Board Approval  
FY 2007/2008**

	Board Meeting Date	# Cases in Excess of \$50,000	Dollar Value	# Cases in Excess of \$100,000	Dollar Value	# Cases in Excess of \$250,000	Dollar Value
1	7/17/07	22	\$ 15,555,324	15	\$ 15,131,401	7	\$ 13,930,961
2	8/14/07	36	27,143,599	24	26,267,872	12	24,581,703
3	9/11-12/07	46	22,182,286	33	21,240,770	17	16,670,980
4	10/02/07	19	6,354,457	13	6,109,059	7	5,379,351
5	10/23/07	19	10,404,660	14	9,850,219	8	8,716,932
6	11/14/07	27	16,216,699	18	15,451,989	10	14,398,544
7	12/11-12/07	37	12,779,989	26	11,997,289	16	10,415,820
8	01/30-31/08	52	16,663,252	34	15,382,136	15	12,445,476
9	02/26/08	25	11,567,276	16	10,885,569	8	9,664,077
10	03/18/08	20	4,571,322	16	4,288,451	5	2,344,787
11	04/08/08	17	2,475,244	10	1,934,155	3	890,746
12	05/13/08	33	16,783,816	16	15,556,594	5	13,718,900
13	05/28/08	16	10,532,763	13	10,328,328	8	9,428,754
14	06/24/08	35	9,781,247	20	8,818,904	8	6,857,357
Totals		404	\$183,011,934	268	\$173,242,736	129	\$149,444,388

**Raising the threshold for Board Member approval to \$100,000**

Reduction in the number of cases to be approved by the Board:  $404 - 268 = 136$

Difference in dollar value  $\$183,011,934 - \$173,242,736 = \$9,769,198$

Percentage of SUTD and PSTD cases still requiring Board approval based on dollars:

$$\$173,242,736 \div \$183,011,934 = 95\%$$

**Raising the threshold for Board Member approval to \$250,000**

Reduction in the number of cases to be approved by the Board:  $404 - 129 = 275$

Difference in dollar value  $\$183,011,934 - \$149,444,388 = \$33,567,546$

Percentage of SUTD and PSTD cases still requiring Board approval based on dollars:

$$\$149,444,388 \div \$183,011,934 = 82\%$$

**BOARD OF EQUALIZATION RULES FOR TAX APPEALS**  
California Code of Regulations  
Title 18. Public Revenues  
Division 2.1. State Board of Equalization – Rules for Tax Appeals  
*Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*  
**ARTICLE 3: CLAIMS FOR REFUND**

**5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER ~~\$50,000~~100,000.**

- (a) If Board Staff in the assigned section or group determines that a refund in excess of ~~\$50,000~~100,000 should be granted, the recommendation for the proposed refund must be submitted to the Board.
- (b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.
- (c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).
- (d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of ~~\$50,000~~100,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.
- (e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.
- (f) If Board Staff in the assigned section determines that a refund in excess of ~~\$50,000~~100,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

**BOARD OF EQUALIZATION RULES FOR TAX APPEALS**  
California Code of Regulations  
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- (e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.
- (f) If Board Staff in the assigned section determines that a refund in excess of ~~\$50,000~~250,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MAY 27, 2009

ITEM P OTHER ADMINISTRATIVE MATTERS

ITEM P3 DEPUTY DIRECTOR'S REPORT

ITEM a1 SALES AND USE TAX

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Reported by: Juli Price Jackson

No. CSR 5214

P R E S E N T

For the Board  
of Equalization:

Betty T. Yee  
Chair

Judy Chu  
Vice-Chair

Bill Leonard  
Member

Michelle Steel  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State Controller  
(per Government Code  
Section 7.9)

Diane G. Olson  
Chief, Board  
Proceedings Division

---oOo---

450 N STREET  
SACRAMENTO, CALIFORNIA  
MAY 27, 2009

---oOo---

MS. OLSON: Our next item is P3a, Sales and Use Tax Issue paper 08-014, proposal to raise the threshold of Board Member approval of refunds in excess of \$50,000.

MS. YEE: All right, thank you.

MS. HENRY: Good afternoon. Randie Henry for the Sales and Use Tax Department.

And to my left is Kevin Hanks, for the Sales and Use Tax Department, and David Gau, for the Property and Special Taxes Department.

Our departments have been working on ways to streamline the refund process to expedite the release of taxpayer funds. As a result we have prepared an issue paper for the Board Member review and direction on whether there is an interest in raising the current refund approval level.

Currently claims for refunds in excess of 50,000 are placed on either the Board's adjudicatory or consent calendar for Board Member approval and made available when the public agenda notice is distributed ten days before the meeting. This public notice, addressed through our public agenda notice, satisfies several statutes under the Sales and Use Tax law and the Property and Special Taxes laws that require a public

1 record be maintained with respect to any refunds in  
2 excess of \$50,000.

3 The two issues of increasing the delegation of  
4 authority, while satisfying our public disclosure  
5 requirement are separate and staff has identified  
6 alternatives to address both areas. Three of the four  
7 alternatives developed by staff allow taxpayers to  
8 received the refunds up to three months earlier than the  
9 current process.

10 The three alternatives for raising the approval  
11 level are as follows:

12 Alternative No. 1, raise the Board Member  
13 approval threshold on claims for refunds to \$100,000;  
14 amend Regulation 5237, Board approval requirement for  
15 refunds over 50,000 of the Rules of Tax Appeals; and  
16 require public record of refunds granted above 50,000 be  
17 maintained in Board Proceedings Division.

18 This alternative allows taxpayers to receive  
19 the refunds up to three months earlier, reduces the  
20 numbers of cases brought before the Board by 34 percent,  
21 with Board Members still approving 95 percent of the  
22 dollars previously brought forward.

23 And it also results in credit interest saving  
24 of approximately \$73,000 and reduces staff hours by  
25 almost 700.

26 Alternative 2, raise the Board Member approval  
27 thresholds on claims for refunds to 250,000; amend  
28 Regulation 5237; and require a public record of refunds



1 granted above 50,000 be maintained in the Board  
2 Proceedings Division.

3 This alternative allows taxpayers to receive  
4 the refunds up to three months earlier, reduces the  
5 number of cases brought before the Board by 68 percent,  
6 with Board Members still approving 82 percent of the  
7 dollars previously brought forward and results in credit  
8 interest savings in approximately 250,000 and reduces  
9 staff hours by almost 1400 hours.

10 Alternative 3, grant the staff delegation  
11 authority to issue all refunds without Board Member  
12 approval; delegation of Regulation 5237; and require a  
13 public record of refunds granted above 50,000 be  
14 maintained in the Board Proceedings Division.

15 This change would allow all claimants to  
16 receive the refunds up to three months earlier on  
17 approved claims of any amount. The 378 cases brought  
18 before the Board and the 2000 staff hours spent  
19 preparing those cases' summaries for the Board calendar  
20 would be eliminated. In addition, this alternative  
21 results in credit interest savings to approximately  
22 \$1.4 million.

23 And, Alternative 4, make no change in the  
24 current approval threshold.

25 Staff recommends adoption of Alternative No. 1,  
26 that approves authorization to publish amendments to  
27 Regulation 5237 of the Rules for Tax Appeals, to raise  
28 the Board Member approval threshold and claims for

1 refund to \$100,000, while still maintaining a public  
2 record in the Board Proceedings for refunds in excess of  
3 \$50,000.

4 Support from this recommendation is based on  
5 the fact that the current \$50,000 threshold has been in  
6 effect since January 1st, 1989 and has not been adjusted  
7 for the increase in average tax rate, which is -- which  
8 was 6.5 in 1989, compared to our 9 percent currently and  
9 an increase in inflation.

10 Considering the increases in sales and use tax  
11 rates and the rate of inflation since 1989, staff  
12 believes that 100,000 is the appropriate level for Board  
13 delegation.

14 Also it is important to note that our internal  
15 review and approval procedures for refund claims will  
16 remain the same. The only change that is impacted is  
17 the review of the Board summary.

18 If you have any questions, we'd be happy to  
19 answer them.

20 MS. YEE: Okay, thank you very much, Miss  
21 Henry.

22 MR. LEONARD: Madam Chair?

23 MS. YEE: Mr. Leonard?

24 MR. LEONARD: Thank you, Madam Chair.

25 I would advocate No. 3, and I'll explain why.  
26 But I'll vote for any of the them except 4.

7 We have to make a change here. And 3,  
28 obviously, works the best in terms of savings of the

1 Department. I don't know about you guys, but the  
2 incredible amount of staff time of the department and  
3 our staffs to go through each of these, when there's  
4 basically no contest, there's no controversy. They've  
5 been well vetted. This Department doesn't give away  
6 money. The taxpayer dollars, they check every one.

7 A huge number of them are literally dumb  
8 mistakes by the taxpayer that are embarrassing, if  
9 nothing else. And it's just really a waste of valuable  
10 resources to spend our Department and legal time looking  
11 at these and to pay the extra credit interest that --  
12 while it waits to come to a Board agenda hearing.

13 Secondly, there's the issue of taxpayer  
14 privacy. Our sister agency, Franchise Tax Board, does  
15 not publish their refunds. They're not required to.  
16 Nobody knows who gets a refund. It's not even a  
17 question.

18 Why -- why the legislature imposed this on us  
19 really needs to be re-visited, especially with the kind  
20 of controls that we have in place.

21 And the third reason is I don't know how  
22 express my concern and offense that a sitting legislator  
23 would be so ignorant of our refund program that he would  
24 choose to attack Board Members for voting for valid,  
25 justified refunds and try to make some kind of political  
26 linkage to it. It's not -- it's not only false, it's  
27 literally impossible to happen. And if he had called  
28 any of us or called the Department, I think he would

1 have found out a lot more about what we do and found  
2 just how fallacious the allegation was.

3 And, for no other reason, we should close that  
4 door because I can't count on the fact that there are  
5 not some other ignorant legislators out there.

6 I would urge the aye vote on Alternative 3.

7 MS. YEE: Thank you very much, Mr. Leonard.

8 Others?

9 Dr. Chu?

10 DR. CHU: Well, I'm with you in spirit,  
11 Mr. Leonard.

12 I certainly think that there is a great burden  
13 on staff to process these refunds, which are really  
14 largely routine. And it's unfair that the FTB can keep  
15 these matters private, but we have to publish for the  
16 world to see.

17 But I do think that maybe we should take an  
18 incremental approach to this. And that's why I would  
19 support the staff recommendation to go with  
20 Alternative 1.

21 Because, you know, I do think that people would  
22 ask, "Why are you taking this step? And at what level  
23 are you taking this step?"

24 And Alternative 1 is fully justified in terms  
25 of being based on inflation. So, it will provide for  
26 some savings in terms of reducing the amount of work by  
27 about 34 percent and people would get their refunds up  
28 to three months earlier.

1           So, I -- I think it would be good to try this  
2 out for a while and then see if we can -- if it works  
3 out, if we can raise the limit at a later time.

4           MS. YEE: Okay, very well.

5           Others?

6           I have a question. The -- and it relates to  
7 the public notice aspect of this.

8           And I appreciate, certainly, the privacy  
9 issues. I guess if a member of the public requests  
10 specific information about what we actually have on  
11 notice with Board Proceedings, is that essentially what  
12 we would provide?

13           It's just what is on record there?

14           MS. HENRY: Right.

15           MS. YEE: So, it would be, I think, essentially  
16 the --

17           MR. LEONARD: Look at that list.

18           MS. MANDEL: I don't think it would be -- my  
19 impression was that the intent would not be that it was  
20 anything more than what would become a public record if  
21 had happened at the Board level.

22           MS. YEE: At the Board level, right.

23           MR. LEONARD: What do we do now?

24           MR. HANKS: That's correct.

25           Except, actually, the public records are  
26 actually a bit more -- for lack of another word --  
27 summarized or than some of the other summaries that we  
28 might see than the brief, of course, that we read about

1 these cases.

2 MS. MANDEL: Correct. Because that's not  
3 necessarily public.

4 MR. HANKS: Correct.

5 MS. MANDEL: Public piece?

6 Like when the minutes come out of the Board  
7 meeting, there's certain information in the minutes  
8 that's how I -- that's what I thought the public record  
9 would be similar to.

10 MR HANKS: The public record -- actually, I've  
11 got a copy of one of these public records in front of  
12 me.

13 And typically what's identified are the account  
14 numbers of the relevant accounts that are impacted, the  
15 Appeals case number, and then the amount of the  
16 adjustment --

17 MS. MANDEL: Right.

18 MR. HANKS: -- related --

19 MS. MANDEL: Right.

20 MR. HANKS: -- to that item.

21 MS. MANDEL: Right.

22 MR. HANKS: But that's all of the information  
23 that is supplied with respect to that, that adjustment.

24 MS. YEE: That's currently what's supplied and  
25 is what is proposed --

26 MR. HANKS: That's correct.

27 MS. YEE: -- in this proposal --

28 MR. HANKS: Yes.

1 MS. YEE: -- under staff recommendation?

2 MR. HANKS: Yes.

3 MR. LEONARD: Madam Chair?

4 MS. YEE: Yes, Mr. Leonard?

5 MR. LEONARD: In one sense that adds to the  
6 confusion because we only disclose the name of the  
7 company, their permit number, and the dollar amount.

8 We don't -- and cannot and should not --  
9 explain why. It leaves it up to the inquiring mind to  
10 fill in the gaps any way they want, which is where we're  
11 in this box.

12 It -- our staff had determined it's  
13 appropriate. We, as Board Members, get that information  
14 privately in greater detail if we want, just like we do  
15 with settlement cases that are closed session.

16 If we have our inquiries of staff, we can make  
17 them. But the --

18 MS. MANDEL: Well --

19 MR. LEONARD: -- taxpayer's privacy is  
20 protected.

21 In this case we're giving -- we're giving just  
22 a tease of information that leaves more out than --

23 MS. MANDEL: -- let me -- I had an experience  
24 where I had to explain for similar reasons --

25 MR. LEONARD: Good luck.

26 MS. MANDEL: -- what happens on these agendas.

27 And the general explanation, because you can't  
28 talk about particular taxpayer information, but the

1 narrow explanation that I've given is that the things  
2 that -- that these are things that staff has vetted and  
3 that they can be things like a taxpayer's paid twice or  
4 they had the documentation to show that certain  
5 transactions, you know, did or didn't happen or, you  
6 know, that they were factual issues that staff resolved  
7 upon an audit of the information, something like that.

8 And I -- you know, if it's a -- if there is  
9 some kind of generalized statement of -- of what -- you  
10 know, some kind of umbrella statement of what kinds of  
11 things are involved, not specific to any particular  
12 case, but that as a general rule, items on -- in this,  
13 you know, sheet of things that we have here, are things  
14 that -- it might be that that would be helpful.

15 I'm not being -- I am like way too tired to  
16 make this make sense, but if that's an issue, which it  
17 has been more than once, if there could be some sort of  
18 generalized statement, so that even somebody who -- who  
19 is isn't familiar with the Board's process, at least  
20 that generalized statement is up front at the top of the  
21 package.

22 And that's -- because I've had to give that  
23 explanation afterwards. And I understand what you're --  
24 what the concern is.

25 But, you know, we have to protect the taxpayer  
26 confidentiality of their underlying thing.

27 Just a thought.

28 MS. YEE: Yeah.



1 MR. LEONARD: But in the public -- if I may?

2 That's a good point because the statute  
3 requires a public disclosure, we may want to look in a  
4 way, whether we make any changes or not, that that --  
5 that statutory public disclosure that we are proposing  
6 to do for those that are being taken away from the  
7 Board's vote action and put to a web page or some other  
8 public notice that we -- that we do an explanatory  
9 paragraph of what as refund is and how a taxpayer might  
10 get to a refund -- give the Mandel speech as a  
11 disclaimer on that page.

12 So, somebody does look into it and get -- they  
13 know before they start what they're looking at a little  
14 better.

15 MR. HANKS: Right.

16 MS. YEE: So, are we --

17 MR. HANKS: I should probably add that there is  
18 a bit more information that I added, what we also  
19 identify is whether or not the amounts in question  
20 relate to redetermination, whether they relate to  
21 credits or cancellations, or whether they are, for  
22 instance, redeterminations that we're determining were  
23 issued in error, we received information -- not in  
24 error -- but we received information from the taxpayer  
25 indicating that there should be a zero liability. So,  
26 in other words, there's a redetermination that was --

27 MS. MANDEL: Because that -- those were the  
28 ones that got delegated sometime ago because we kept

1     having --

2                 MR. HANKS:  Correct.

3                 MS. MANDEL:  -- these ones that were -- where  
4     it turned out they didn't owe anything at all and so why  
5     should they have to be on a Board agenda, when they --  
6     when the redetermination -- they didn't owe anything at  
7     all?

8                 MR. HANKS:  Correct.

9                 MS. MANDEL:  But that might have been written  
10    up.

11                MS. YEE:  So, Mr. Leonard, are you suggesting  
12    that we just have kind of a boilerplate paragraph on the  
13    public notice in terms of what the potential basis of  
14    the amounts --

15                MR. LEONARD:  I think Ms. Mandel made a great  
16    suggestion -- that whatever that notice is, that we  
17    explain some of our terms of art so as to make for less  
18    confusion as to kind of who and what these taxpayers  
19    are.

20                Since we to have give their name and their  
21    permit number and the dollar value, it -- if left  
22    hanging on its own, without explanation that it's an  
23    amended return, that it's facts discovered later -- kind  
24    of the usual list that we know of -- that could give a  
25    member of the public some greater confidence that it's  
26    the kind of refund that they get on their taxes -- that  
27    they overpaid and we agree they overpaid.

28                MS. MANDEL:  Yeah, but not specific to a

1 taxpayer?

2 MR. LEONARD: But not specific to, but just --  
3 yeah, just --

4 MS. MANDEL: But that just deals with the --  
5 that one aspect of life.

6 MS. YEE: Okay.

7 MS. HENRY: Maybe the staff could work on  
8 some -- Ms. Mandel calls umbrella language -- and run it  
9 through the Legal Department and try to give some  
10 definition of different, you know, terms that we use and  
11 what that might mean and maybe that would help clarify  
12 some of the items.

13 We even have an issue with some of the refunds  
14 are arbitrary numbers. So, when somebody looks at the  
15 number, you know, what's an arbitrary numbers?

16 These are numbers that we give people that  
17 don't have permits. And a lot of times in use tax --

18 MS. MANDEL: You mean "arbitrary" -- the permit  
19 number is arbitrary?

20 MS. HENRY: Right, right.

21 So, even some our terms for this -- but even --  
22 right.

23 MR. LEONARD: Bingo, Alternative 3 is looking  
24 better and better.

25 MS. HENRY: And that's what, I think,  
26 Mr. Leonard's talking about, is some of the -- our terms  
27 and what they mean and how they can be misconstrued.

28 So, maybe we can look at that and come up with

1 something and put it through clearance.

2 MS. YEE: Okay. Could I -- I'm sorry to kind  
3 of beat this to death, but -- so, if under this proposed  
4 public notice, if -- let's say a member of the press  
5 comes in and they're kind of curious about, "Gee, what's  
6 this redetermination related to account number  
7 so-and-so?"

8 What information would we actually -- I guess,  
9 would the identity of the taxpayer actually be disclosed  
10 at any point?

11 MR. HANKS: Right.

12 Currently what we're identifying is just that  
13 account number, that arbitrary account number, related  
14 to the ones that I have here as an example.

15 MS. YEE: Okay.

16 MR. HANKS: Of course, we'd have other account  
17 numbers, our regular seller's permit numbers -- would  
18 identify the case number, would identify the amount.

19 It would also identify whether or not it  
20 related to a redetermination that was redetermined to  
21 zero. It would identify if it was a credit or a  
22 cancellation of a billing.

23 MS. MANDEL: And did it --

24 MR. LEONARD: But we don't --

25 MS. MANDEL: -- have the name?

26 MS. YEE: The name of --

27 MR. LEONARD: The name of --

28 MR. HANKS: This -- this does not -- the

1 current record does not include the taxpayer name.

2 MS. YEE: And why?

3 MR. HANKS: Just the account number.

4 MR. LEONARD: So, it's more information, but  
5 less specific?

6 MS. MANDEL: Is it because --

7 MR. LEONARD: Because that's on our agenda  
8 right now, the names we all read.

9 MS. MANDEL: -- but is that because what you're  
10 looking at, the current public record thing that we're  
11 doing is the ones that were getting set back to zero?

12 Or is that just --

13 MR. HANKS: No, not all of them, no.

14 The ones that I mentioned that are going to be  
15 redetermined to zero, yes, those relate to consumer use  
16 tax amounts, but then you'll have other amounts that  
17 relate to credits or cancellations that don't  
18 necessarily fall in that category.

19 MS. YEE: Oh, so, that's --

20 MS. MANDEL: So, the -- oh.

21 Well, we need to have the language for the  
22 Board meeting and not for -- okay.

23 Okay, so -- but it has the -- it does have the  
24 account numbers?

25 MR. HANKS: It does.

26 MS. HENRY: I was going to ask Deborah Cooke if  
7 she had anything that she wanted to add?

28 MS. COOKE: Hi, Deborah Cooke with the Legal

1 Department.

2 I'm not quite certain what the proposal is  
3 before the Board. So, I haven't seen that yet. But if  
4 you're asking about what's disclosable with respect to  
5 certain sales and use tax cases, there's very limited  
6 information.

7 MS. MANDEL: We're talking about -- there's a  
8 Code section -- there's a Rev. and Tax Code section,  
9 something, something, something, that requires public  
10 record be made of refunds -- I think it's refunds  
11 50,000 -- over \$50,000.

12 Do you have it there, Kevin?

13 MS. HENRY: Yeah.

14 MR. HANKS: I do.

15 MS. MANDEL: And, so, that's the public record  
16 that --

17 MS. COOKE: 6901.

18 MS. MANDEL: Yeah, and that's the public record  
19 that he's talking about on -- that gets maintained.

20 And I had assumed that it had the names, but --

21 MS. COOKE: So, the question -- there's some  
22 question as to what specific information, in addition to  
23 the amounts and the --

24 MS. YEE: Well, here's what I'm really driving  
25 at, the example that you've given us, in terms of what  
26 the public notice would look like, is analogous to what  
27 is currently a notice for consumer use tax, okay --

28 MR. HANKS: Yes.

1 MS. YEE: -- which does not disclose the name  
2 of the individual or the entity.

3 MR. HANKS: That's correct.

4 MS. YEE: It's account number, Appeals case  
5 number, amount?

6 MR. HANKS: Correct.

7 MS. YEE: I think the discussion we had had  
8 previously spoke to just, at least, giving the public a  
9 little bit more of a flavor as to the basis for what  
10 some of these amounts might be for.

11 My question was if there actually a public  
12 record request for information related to one of these  
13 matters that is now a matter on the public notice, what  
14 would actually be disclosed?

15 Is it just the account number, Appeals case  
16 number or amount, which is actually less information  
17 than we what we have currently coming before our Board  
18 Agenda?

19 MR. LEONARD: Right.

20 MR. HANKS: Ms. Yee, actually, we did look into  
21 that as well.

22 We have a listing here of the confidentiality  
23 disclosure statutes that relate to the tax programs that  
24 we administer.

25 And, actually, it varies. The registration  
26 information that we're talking about for the sales and  
27 use tax programs is completely disclosable.

28 But, for instance, the same registration

1 information under the California tire fee, oil spill  
2 response fees, et cetera, are confidential.

3 So, it depends on the tax program. So, some of  
4 this registration information --

5 MR. LEONARD: What about the --

6 MR. HANKS: -- is disclosable, other is not.

7 MS. YEE: Well, not quite ready to go to  
8 Alternative 3 yet, but that's a little troubling.

9 MR. LEONARD: So, David Gau's more secretive  
10 than Ms. Henry?

11 MS. YEE: Is there a reason why those aren't --

12 MR. GAU: I don't know why they are not, other  
13 than the statute is written that way.

14 MR. LEONARD: If I may offer?

15 Most of our fee programs are after the date of  
16 this refund statute being taken away from Board of  
17 Control and given to FTB and to ourselves.

18 And as you noticed on the background papers  
19 staff put together, FTB successfully lobbied their own  
20 way out of it at that time. We didn't -- we should  
21 have.

22 And as the fee programs came along, I think it  
23 was recognized by the legislature there's some --  
24 there's a privacy interest that has to be weighed  
25 against the public interest, even if the person is --  
26 their purpose in life is selling tires.

27 MS. YEE: I guess recognizing the inconsistency  
28 across programs, to the extent that we can make the



1 registrants public, I would say we ought to do so in the  
2 public notice.

3 And then I would agree with Dr. Chu, I'm more  
4 of an incrementalist on this approach as well and,  
5 mainly, because of the concern about what the notice  
6 would look like.

7 MR. GAU: Yeah, I would just add that we could  
8 -- for those programs that do have that confidentiality,  
9 we could make that part of the umbrella --

10 MS. YEE: Absolutely.

11 MR. GAU: -- language to specify which ones  
12 those are.

13 MS. YEE: Right. Okay, other comments,  
14 Members?

15 Okay, do we have a motion?

16 DR. CHU: I move to approve Alternative 1, to  
17 raise the threshold to 100,000.

18 MS. YEE: Okay. And with the direction about  
19 the specific disclaimers on --

20 DR. CHU: Yes.

21 MS. YEE: Okay. Let me second that motion,  
22 then Mr. Leonard?

23 MR. LEONARD: Madam Chair, I heard both you and  
24 Dr. Chu say you are interested in an incremental  
25 approach.

26 Do you want to put into the motion -- ask staff  
7 to bring back to us in, oh, thirty days how well it's  
28 worked or pick a period of time that is reasonable to

1     you?

2             I don't want Dr. Chu to be gone, but pick a --  
3     if it's incremental, we should find out how it's  
4     working, what kind of press inquiries or any other  
5     controversies have erupted changing that.

6             Because if it is incremental, we're looking --  
7     I think we all agree that the policy of the law was  
8     based on bad information at the time when Board of  
9     Control, that handles claims by people that want the  
10    State's money, that they say the State owes them because  
11    they were damaged or something, being merged in with  
12    taxpayers asking for refund from the Board of Control,  
13    which is why they took it away -- it doesn't work. It's  
14    two different issues.

15            But they kept part of that Board of Control  
16    mentality, for whatever reason, not thinking it through,  
17    and they've done a better job later.

18            So, could the -- part of the motion be as to  
19    when we ask staff to come back with an update and any  
20    recommendations they might have?

21            MS. YEE: When would this actually take effect  
22    in terms of -- the proposal?

23            MR. HANKS: I forgot now. I think we put  
24    together a timeline here.

25            Let's see, and I think we had shared that with  
26    your office as well (indicating). We're also requesting  
27    notification to publish.

28            And, so, this would be a matter that would go

1 to OAL.

2 MS. YEE: What's the timeline, Mr. Hanks?

3 MR. HANKS: The timeline -- actually, we're  
4 estimating that approval by OAL could take place as  
5 early as November this year.

6 MS. MANDEL: That's because it's in a  
7 regulation that it --

8 MR. HANKS: That's correct.

9 MS. MANDEL: -- okay.

10 MS. YEE: So, it's going to be a while?

11 MR. HANKS: Yes.

12 MR. LEONARD: Why don't we start with 3 and  
13 then back off if there's a problem at OAL?

14 We should always ask for more and then you can  
15 always back off.

16 MS. YEE: Well, I think I want to stick with  
17 this kind of small increment for now.

18 We have a motion by Dr. Chu, second by Yee.

19 Is there objection?

20 Hearing none, that motion carries.

21 Thank you.

22 ---o0o---

23

24

25

26

27

28

[illegible]

Dated: June 22, 2009

JULI PRICE JACKSON  
Hearing Reporter

**ESTIMATE OF COST OR SAVINGS RESULTING  
FROM PROPOSED REGULATORY ACTION**

**Proposed Amendment of Sales and Use Tax Regulations 5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings**

**STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING**

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement  
Prepared by  Date 6-17-9  
Regulations Coordinator

Approved by  Date 6/18/09  
Chief Counsel

**ECONOMIC AND FISCAL IMPACT STATEMENT****(REGULATIONS AND ORDERS)**

D. 399 (REV. 12/2008)

**See SAM Section 6601 - 6616 for Instructions and Code Citations**

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 5237, Board Approval Required for Refunds Over \$50,000		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits.): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

d. Describe other economic costs that may occur: \_\_\_\_\_

## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_
4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_
5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

### C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_
2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?  
Explain: \_\_\_\_\_
3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

### D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- |                |                   |                |
|----------------|-------------------|----------------|
| Regulation:    | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No  
Explain: \_\_\_\_\_

### E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: \$ _____

### FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.



**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

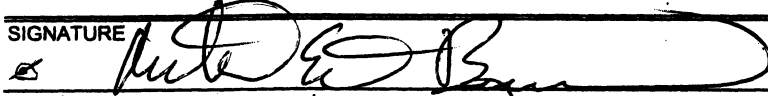


- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE 		TITLE Regulations Coordinator
AGENCY SECRETARY <sup>1</sup>	APPROVAL/CONCURRENCE  PROGRAM BUDGET MANAGER	DATE 6/15/09
DEPARTMENT OF FINANCE <sup>2</sup>		DATE
APPROVAL/CONCURRENCE  Exempt under SAM section 6660		

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

**ECONOMIC AND FISCAL IMPACT STATEMENT****(REGULATIONS AND ORDERS)**

D. 399 (REV. 12/2008)

**See SAM Section 6601 - 6616 for Instructions and Code Citations**

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 5266, Appeals Staff Recommendations; Requests for Reconsideration;		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)**

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits.): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)**

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

d. Describe other economic costs that may occur: \_\_\_\_\_

## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

### C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: \_\_\_\_\_

3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

### D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain: \_\_\_\_\_

### E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: \$ _____

### FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**




- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE 		TITLE Regulations Coordinator
AGENCY SECRETARY <sup>1</sup>	APPROVAL/CONCURRENCE 	DATE 6/15/2009
DEPARTMENT OF FINANCE <sup>2</sup> PROGRAM BUDGET MANAGER  Exempt under SAM section 6660		DATE

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

## NOTICE PUBLICATION/REGULATORY SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2009-061502</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE  JUN 15 '09      JUN 26 '09  Office of Administrative Law  NOTICE	REGULATIONS
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 AGENCY WITH RULEMAKING AUTHORITY  
 State Board of Equalization

AGENCY FILE NUMBER (If any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Board Approval Required for Refunds Over \$50,000		TITLE(S) 18	FIRST SECTION AFFECTED 5237	2. REQUESTED PUBLICATION DATE June 26, 2009
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130
FAX NUMBER (Optional) (916) 324-3984		NOTICE REGISTER NUMBER		PUBLICATION DATE
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn				

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

ACTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)  TITLE(S)	ADOPT
	AMEND
	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
TYPED NAME AND TITLE OF SIGNATORY	

For use by Office of Administrative Law (OAL) only

## **Notice of Proposed Regulatory Action**

### **The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Sections:**

**5237, *Board Approval Required for Refunds Over \$50,000*; and  
5266, *Appeals Staff Recommendations; Requests for Reconsideration;  
Requests for Oral Hearings***

#### **NOTICE IS HEREBY GIVEN**

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to amend California Code of Regulations, title 18, section (Regulation) 5237, *Board Approval Required for Refunds Over \$50,000*. The proposed amendments to Regulation 5237 will implement, interpret, and make specific Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, which authorize the Board to grant refunds of specified taxes and fees.

The Board, pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 also proposes to amend California Code of Regulations, title 18, section (Regulation) 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. The proposed amendments to Regulation 5266 will implement, interpret, and make specific Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332,

60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. These Revenue and Taxation Code sections authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

A public hearing on the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on August 31, 2009. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed amendments. In addition, if the Board receives written comments prior to the hearing on August 31, 2009, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 5237 and 5266.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **Current Law**

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212,



60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

The Board previously delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceeded \$50,000. The Board previously delegated authority to the Executive Director to grant refunds of duplicate or erroneous electronic funds transfers in excess of \$50,000, which are authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. The Board also previously delegated authority to staff in the Appeals Division of the Board's Legal Department to grant or deny petitions, refunds, and requests for relief (collectively "appeals"), and cancel previously assessed taxes and fees, unless the amounts at issue exceeded \$50,000.

Regulation 5237 prescribes the limits of the Board's prior delegations of authority to the Executive Director and Board staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. Regulation 5237, subdivisions (a) and (f), explain that Sales and Use Tax Department and Property and Special Taxes Department staff's decisions to grant or deny refunds in excess of \$50,000 must be submitted to the Board Members for approval. Regulation 5237, subdivision (d), explains that the Executive Director must approve refunds of duplicate or erroneous electronic funds transfers that exceed \$50,000.

Regulation 5266, subdivision (f), prescribes the limits of the Board's prior delegation of authority to Appeals Division staff to grant or deny appeals and cancel previously assessed taxes and fees when authorized by Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502,

46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. Regulation 5266, subdivision (f), explains that Appeals Division staff's decisions to grant or deny appeals must be submitted to the Board Members for approval if the amount granted exceeds \$50,000.

### **Proposed Amendments**

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The Board also directed Board staff to amend the Board's regulations to incorporate the new delegation.<sup>1</sup>

The Board expanded the authority delegated to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 because the \$50,000 limit on the Board's prior delegation of authority to Board staff had not been revised to reflect inflation occurring over the last 20 years since the limit was first imposed. The Board also expanded the authority delegated to Board staff so that the Board can process refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 more quickly and efficiently, and reduce the credit interest paid on such refunds.

The purpose of the proposed amendments to Regulation 5237, subdivisions (a), (d), and (f), is to clarify that the Board has delegated authority to staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, that do not exceed \$100,000, including refunds of duplicate or erroneous electronic funds transfers, without further approval from the Board Members. The purpose of the proposed amendments to Regulation 5266, subdivision (f), is to clarify that the Board has also delegated authority to Appeals Division staff to grant or deny appeals, and cancel previously assessed taxes, where the amount granted does not exceed \$100,000. The proposed amendments to Regulation 5237 and 5266 are necessary to make the

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<sup>1</sup> The Board also voted to delegate authority to Board staff to grant or deny refunds of the Private Railroad Car Tax authorized by Revenue and Taxation Code section 11551, unless the refunds exceed \$100,000. However, Regulations 5237 and 5266 are not being amended as a result of the delegation of authority to grant or deny refunds of Private Railroad Car Tax because neither regulation applies to such refunds.

regulations consistent with the Board's current delegation of authority to Board staff to grant or deny refunds, decide appeals, and cancel prior assessments.

There are no comparable federal regulations or statutes to Regulation 5237 or 5266 or the proposed amendments to the regulations.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments to Regulations 5237 and 5266 do not impose a mandate on local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments will result in no direct or indirect cost or savings to any state agency, any costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### **NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed amendments make Regulations 5237 and 5266 consistent with the Board's May 27, 2009, delegation of authority to Board staff to grant or deny specified refunds of taxes and fees. Therefore, the Board has made an initial determination that the proposed amendments to Regulations 5237 and 5266 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

#### **NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the adoption of the proposed amendments to Regulations 5237 and 5266 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

### **NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of the proposed amendments to Regulations 5237 and 5266 will not have a significant effect on housing costs.

### **DETERMINATION REGARDING ALTERNATIVES**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

### **CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax, Counsel III (Specialist), by telephone at (916) 322-5989, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an Initial Statement of Reasons and underscore and strikeout versions of Regulations 5237 and 5266 showing the express terms of the proposed amendments. These documents and all information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

## **SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8**

The Board may adopt the proposed amendments to Regulations 5237 and 5266 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

## **AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulation 5237 and 5266, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

**Bennion, Richard**

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**From:** Smith, Rose [Rose.Smith@BOE.CA.GOV]  
**Sent:** Friday, June 26, 2009 9:39 AM  
**To:** BOE\_REGULATIONS@LISTSERV.CAHWNET.GOV  
**Subject:** State Board of Equalization - Announcement of Regulatory Change 5237 and 5266

The State Board of Equalization will hold a public hearing regarding proposed amendments to Regulations 5237, *Board Approval Required for Refunds Over \$50,000*; and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. The proposed amendments make Regulations 5237 and 5266 consistent with the current delegation of authority to staff to grant or deny refunds.

The public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Monday, August 31, 2009.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:

<http://www.boe.ca.gov/regs/reg5237.htm>

Questions regarding the substance of the proposed amendments to Regulations 5237 and 5266 should be directed to Mr. Bradley Heller, Tax Counsel III (Specialist), telephone (916) 324-2657, e-mail [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), mail at State Board of Equalization, Attn: Bradley Heller, MIC:82, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879, Sacramento, CA 94279-0080.

The backup contact person is:

Name: Elberta Portman  
 Address: 2005 Evergreen Street, Suite 1100  
 Sacramento, CA 95815  
 Telephone No.: (916) 561-8782  
 Fax No.: (916) 263-2671  
 E-Mail Address: eportman@mbc.ca.gov

Website Access: Materials regarding this proposal can be found at:

www.pac.ca.gov.

## **TITLE 18. BOARD OF EQUALIZATION**

### **Notice of Proposed Regulatory Action**

**The State Board of Equalization  
 Proposes to Adopt Amendments to  
 California Code of Regulations, Title 18, Sections:**

***5237, Board Approval Required for Refunds Over \$50,000; and***

***5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings***

### **NOTICE IS HEREBY GIVEN**

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to amend California Code of Regulations, title 18, section (Regulation) 5237, *Board Approval Required for Refunds Over \$50,000*. The proposed amendments to Regulation 5237 will implement, interpret, and make specific Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, which authorize the Board to grant refunds of specified taxes and fees.

The Board, pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 also proposes to amend California Code of Regulations, title 18, section (Regulation) 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. The proposed amendments to Regulation 5266 will implement, interpret, and make specific Revenue

and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. These Revenue and Taxation Code sections authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

A public hearing on the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on August 31, 2009. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed amendments. In addition, if the Board receives written comments prior to the hearing on August 31, 2009, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 5237 and 5266.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

#### **Current Law**

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members

are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

The Board previously delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceeded \$50,000. The Board previously delegated authority to the Executive Director to grant refunds of duplicate or erroneous electronic funds transfers in excess of \$50,000, which are authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. The Board also previously delegated authority to staff in the Appeals Division of the Board's Legal Department to grant or deny petitions, refunds, and requests for relief (collectively "appeals"), and cancel previously assessed taxes and fees, unless the amounts at issue exceeded \$50,000.

Regulation 5237 prescribes the limits of the Board's prior delegations of authority to the Executive Director and Board staff in the Sales and Use Tax Department

and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. Regulation 5237, subdivisions (a) and (f), explain that Sales and Use Tax Department and Property and Special Taxes Department staff's decisions to grant or deny refunds in excess of \$50,000 must be submitted to the Board Members for approval. Regulation 5237, subdivision (d), explains that the Executive Director must approve refunds of duplicate or erroneous electronic funds transfers that exceed \$50,000.

Regulation 5266, subdivision (f), prescribes the limits of the Board's prior delegation of authority to Appeals Division staff to grant or deny appeals and cancel previously assessed taxes and fees when authorized by Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. Regulation 5266, subdivision (f), explains that Appeals Division staff's decisions to grant or deny appeals must be submitted to the Board Members for approval if the amount granted exceeds \$50,000.

### Proposed Amendments

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The Board also directed Board



staff to amend the Board's regulations to incorporate the new delegation.<sup>1</sup>

The Board expanded the authority delegated to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 because the \$50,000 limit on the Board's prior delegation of authority to Board staff had not been revised to reflect inflation occurring over the last 20 years since the limit was first imposed. The Board also expanded the authority delegated to Board staff so that the Board can process refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 more quickly and efficiently, and reduce the credit interest paid on such refunds.

The purpose of the proposed amendments to Regulation 5237, subdivisions (a), (d), and (f), is to clarify that the Board has delegated authority to staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, that do not exceed \$100,000, including refunds of duplicate or erroneous electronic funds transfers, without further approval from the Board Members. The purpose of the proposed amendments to Regulation 5266, subdivision (f), is to clarify that the Board has also delegated authority to Appeals Division staff to grant or deny appeals, and cancel previously assessed taxes, where the amount granted does not exceed \$100,000. The proposed amendments to Regulation 5237 and 5266 are necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny refunds, decide appeals, and cancel prior assessments.

There are no comparable federal regulations or statutes to Regulation 5237 or 5266 or the proposed amendments to the regulations.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments to Regulations 5237 and 5266 do not impose a mandate on local agen-

cies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments will result in no direct or indirect cost or savings to any state agency, any costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### **NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed amendments make Regulations 5237 and 5266 consistent with the Board's May 27, 2009, delegation of authority to Board staff to grant or deny specified refunds of taxes and fees. Therefore, the Board has made an initial determination that the proposed amendments to Regulations 5237 and 5266 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

#### **NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the adoption of the proposed amendments to Regulations 5237 and 5266 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

#### **NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of the proposed amendments to Regulations 5237 and 5266 will not have a significant effect on housing costs.

<sup>1</sup> The Board also voted to delegate authority to Board staff to grant or deny refunds of the Private Railroad Car Tax authorized by Revenue and Taxation Code section 11551, unless the refunds exceed \$100,000. However, Regulations 5237 and 5266 are not being amended as a result of the delegation of authority to grant or deny refunds of Private Railroad Car Tax because neither regulation applies to such refunds.

DETERMINATION REGARDING  
ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax, Counsel III (Specialist), by telephone at (916) 322-5989, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

AVAILABILITY OF INITIAL STATEMENT  
OF REASONS AND TEXT OF  
PROPOSED REGULATION

The Board has prepared an Initial Statement of Reasons and underscore and strikeout versions of Regulations 5237 and 5266 showing the express terms of the proposed amendments. These documents and all information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

SUBSTANTIALLY RELATED CHANGES  
PURSUANT TO GOVERNMENT CODE  
SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 5237 and 5266 with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a suf-

ficiently related change is made, the Board will make the full text of the resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT  
OF REASONS

If the Board adopts the proposed amendments to Regulation 5237 and 5266, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

**TITLE 19. OFFICE OF THE STATE  
FIRE MARSHAL**

**NOTICE OF PROPOSED RULEMAKING**

**OFFICE OF THE STATE FIRE MARSHAL  
California Code of Regulations Title-19**

The State Fire Marshal proposes to adopt the proposed regulations described below after considering all comments, objections or recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

A public hearing has not been scheduled; however, the State Fire Marshal will accept written comments regarding this regulatory action for 45 days beginning June 26, 2009 until 5 p.m. on August 10, 2009.

Please address your comments to:

**OFFICE OF THE STATE FIRE MARSHAL  
Attention: Diane Arend, Regulations  
Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460**

Written comments may also be faxed to (916) 445-8459 or by e-mail to [diane.arend@fire.ca.gov](mailto:diane.arend@fire.ca.gov)  
Attention: proposed gasoline containers repeal.

PUBLIC HEARING

The State Fire Marshal has not scheduled a public hearing on this proposed action. However, pursuant to



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

50 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
[www.boe.ca.gov](http://www.boe.ca.gov)

BETTY T. YEE  
First District, San Francisco

BILL LEONARD  
Second District, Ontario/Sacramento

MICHELLE STEEL  
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

RAMON J. HIRSIG  
Executive Director

**June 26, 2009**

**To Interested Parties:**

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

**Proposed to Adopt Regulations 5237, *Board Approval Required for Refunds Over \$50,000*; and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to amend California Code of Regulations, title 18, section (Regulation) 5237, *Board Approval Required for Refunds Over \$50,000*. The proposed amendments to Regulation 5237 will implement, interpret, and make specific Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, which authorize the Board to grant refunds of specified taxes and fees.

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38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. These Revenue and Taxation Code sections authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

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## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

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Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454,

43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

The Board previously delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceeded \$50,000. The Board previously delegated authority to the Executive Director to grant refunds of duplicate or erroneous electronic funds transfers in excess of \$50,000, which are authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. The Board also previously delegated authority to staff in the Appeals Division of the Board's Legal Department to grant or deny petitions, refunds, and requests for relief (collectively "appeals"), and cancel previously assessed taxes and fees, unless the amounts at issue exceeded \$50,000.

Regulation 5237 prescribes the limits of the Board's prior delegations of authority to the Executive Director and Board staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. Regulation 5237, subdivisions (a) and (f), explain that Sales and Use Tax Department and Property and Special Taxes Department staff's decisions to grant or deny refunds in excess of \$50,000 must be submitted to the Board Members for approval. Regulation 5237, subdivision (d), explains that the Executive Director must approve refunds of duplicate or erroneous electronic funds transfers that exceed \$50,000.

Regulation 5266, subdivision (f), prescribes the limits of the Board's prior delegation of authority to Appeals Division staff to grant or deny appeals and cancel previously assessed taxes and fees when authorized by Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5,

45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

Regulation 5266, subdivision (f), explains that Appeals Division staff's decisions to grant or deny appeals must be submitted to the Board Members for approval if the amount granted exceeds \$50,000.

## **PROPOSED AMENDMENTS**

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The Board also directed Board staff to amend the Board's regulations to incorporate the new delegation.<sup>1</sup>

The Board expanded the authority delegated to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 because the \$50,000 limit on the Board's prior delegation of authority to Board staff had not been revised to reflect inflation occurring over the last 20 years since the limit was first imposed. The Board also expanded the authority delegated to Board staff so that the Board can process refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 more quickly and efficiently, and reduce the credit interest paid on such refunds.

The purpose of the proposed amendments to Regulation 5237, subdivisions (a), (d), and (f), is to clarify that the Board has delegated authority to staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, that do not exceed \$100,000, including refunds of duplicate or erroneous electronic funds transfers, without further approval from the Board Members. The purpose of the proposed amendments to Regulation 5266, subdivision (f), is to clarify that the Board has also delegated authority to Appeals Division staff to grant or deny appeals, and cancel previously assessed taxes, where the amount granted does not exceed \$100,000. The proposed amendments to Regulation 5237 and 5266 are necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny refunds, decide appeals, and cancel prior assessments.

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<sup>1</sup> The Board also voted to delegate authority to Board staff to grant or deny refunds of the Private Railroad Car Tax authorized by Revenue and Taxation Code section 11551, unless the refunds exceed \$100,000. However, Regulations 5237 and 5266 are not being amended as a result of the delegation of authority to grant or deny refunds of Private Railroad Car Tax because neither regulation applies to such refunds.

There are no comparable federal regulations or statutes to Regulation 5237 or 5266 or the proposed amendments to the regulations.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments to Regulations 5237 and 5266 do not impose a mandate on local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments will result in no direct or indirect cost or savings to any state agency, any costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### **NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed amendments make Regulations 5237 and 5266 consistent with the Board's May 27, 2009, delegation of authority to Board staff to grant or deny specified refunds of taxes and fees. Therefore, the Board has made an initial determination that the proposed amendments to Regulations 5237 and 5266 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

#### **NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the adoption of the proposed amendments to Regulations 5237 and 5266 will neither create nor eliminate jobs in the State of

California nor result in the elimination of existing businesses nor create or expand business in the State of California.

### **NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of the proposed amendments to Regulations 5237 and 5266 will not have a significant effect on housing costs.

### **DETERMINATION REGARDING ALTERNATIVES**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

### **CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax, Counsel III (Specialist), by telephone at (916) 322-5989, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an Initial Statement of Reasons and underscore and strikeout versions of Regulations 5237 and 5266 showing the express terms of the proposed amendments. These documents and all information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).



June 26, 2009

## **SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8**

The Board may adopt the proposed amendments to Regulations 5237 and 5266 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

## **AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulation 5237 and 5266, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

Sincerely,



Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb

Enclosures

## **Initial Statement of Reasons**

### **Proposed Amendments to California Code of Regulations, Title 18, Sections:**

***5237, Board Approval Required for Refunds Over \$50,000; and  
5266, Appeals Staff Recommendations; Requests for  
Reconsideration; Requests for Oral Hearings***

#### **SPECIFIC PURPOSE AND NECESSITY**

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds of taxes and fees authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The specific purpose of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5237 is to clarify that, as a result of the May 27, 2009, vote, the Board has delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny the specified refunds, without further approval from the Board Members. The specific purpose of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5266 is to clarify that, as a result of the May 27, 2009, vote, the Board has also delegated authority to Appeals Division staff to grant or deny petitions, claims for refund, and requests for relief, and cancel previously issued assessments, unless the amount granted exceeds \$100,000. The Board has determined that the proposed amendments to Regulations 5237 and 5266 are reasonably necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny the specified refunds.

#### **DOCUMENTS RELIED UPON**

The Board relied upon a May 7, 2009, memorandum from Ms. Randy L. Henry, the Deputy Director of the Board's Sales and Use Tax Department, to Mr. Raymond J. Hirsig, the Board's Executive Director, in deciding to delegate additional authority to Board staff to grant or deny claims for refund and proposing that Regulations 5237 and 5266 be amended to make them consistent with the new delegation. The memorandum contained background information regarding the Board's prior, 1989 delegation of authority to Board staff to grant or deny refunds, unless the refunds exceed \$50,000, and the memorandum is available on the Board's Website at [http://www.boe.ca.gov/meetings/pdf/Item\\_P3a1\\_052709.pdf](http://www.boe.ca.gov/meetings/pdf/Item_P3a1_052709.pdf).

## **ALTERNATIVES CONSIDERED**

The Board considered, but did not approve, three alternative delegations of authority to Board staff and three conforming regulatory actions, on May 27, 2009. The first alternative would have delegated authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 11551, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$250,000. The second alternative would have delegated authority to Board staff to grant or deny such refunds regardless of the dollar amount. The third alternative would have made no change to the Board's prior, 1989 delegation of authority to Board staff to grant or deny refunds, unless the refunds exceed \$50,000. (The alternatives are described in more detail in the May 7, 2009, memorandum.)

The Board did not approve the third alternative, which would have left the 1989 delegation of authority and Regulations 5237 and 5266 unchanged, because the \$50,000 limit on the 1989 delegation of authority needed to be increased to account for inflation. The Board did not approve the first and second alternatives, which would have increased the \$50,000 limit on the Board's 1989 delegation of authority to \$250,000 or eliminated the \$50,000 limit, respectively, because the Board wanted to increase Board staff's delegated authority more incrementally.

## **NO ADVERSE ECONOMIC IMPACT ON BUSINESS**

The proposed amendments make Regulations 5237 and 5266 consistent with the Board's May 27, 2009, delegation of authority to Board staff to grant or deny specified refunds of taxes and fees. Therefore, the Board has determined that the proposed amendments make the Board's internal processing of refunds more efficient and will not have a significant adverse economic impact on business.

**5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER ~~\$50,000~~  
\$100,000.**

(a) If Board Staff in the assigned section or group determines that a refund in excess of ~~\$50,000~~ \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Board.

(b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.

(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).

(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of ~~\$50,000~~ \$100,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.

(e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.

(f) If Board Staff in the assigned section determines that a refund in excess of ~~\$50,000~~ \$100,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, 60521.

**5266. APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR ORAL HEARINGS.**

(a) Appeals Staff may make the following recommendations in the Decision and Recommendation:

- (1) Deny the petition, claim, or request for relief in its entirety.
- (2) Grant the petition, claim, or request for relief in its entirety.
- (3) Grant the petition, claim, or request for relief in part.
- (4) That Board Staff in the appropriate Department re-audit the issues raised in the petition, claim, or request for relief as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued.

(2) Disagree and file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

(A) If an oral hearing is or was requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or supplemental Decision and Recommendation) Board Staff will:

(i) Contact the petitioner, claimant, or person requesting relief to inquire as to the existence of such disagreement; and

(ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.

(3) Agree with the Decision and Recommendation.

(c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Department represented at the appeals conference, and any state agency represented at the appeals conference, may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief within 30 days after the Decision and Recommendation was issued.

(2) Agree with the Decision and Recommendation.

(d) Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any state agency represented at the appeals conference may file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. If an oral hearing is requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(e) If Appeals Staff receive a request for reconsideration, Appeals Staff will prepare a Supplemental Decision and Recommendation addressing any new information provided in the request for reconsideration, copies of which will be sent to all parties. Appeals Staff may also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c).

(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds ~~\$50,000~~ \$100,000, the recommendation will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452,

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55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501,  
60502, 60506, 60507, 60521, 60522, 60581.

## Regulation History

**Type of Regulation:** Sales and Use Tax

Regulations: 5237 and 5266

Title: 5237, *Board Approval Required for Refunds Over \$50,000*; and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*

**Preparation:** Brad Heller

**Legal Contact:** Brad Heller

Staff request for authorization to publish a proposed amendment to Regulations 5237 and 5266 consistent with the current delegation of authority to staff to grant or deny refunds.

### History of Proposed Regulation:

August 31, 2009	Public hearing
August 24, 2009	45-day public comment period ends
June 26, 2009	OAL publication date; 45-day public comment period begins; IP mailing
June 15, 2009	Notice to OAL
May 27, 2009	Other Administrative Matters, Board Authorized Publication (vote 5 -0)

**Sponsor:** NA

**Support:** NA

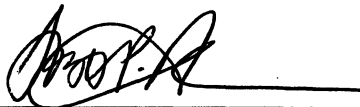
**Oppose:** NA



## Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Tax Regulations 5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings , did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on June 26, 2009, 64 days prior to the public hearing.

December 3, 2009

A handwritten signature in black ink, appearing to read 'Toya P. Davis', is written over a horizontal line.

Toya P. Davis  
Regulations Coordinator  
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

AUGUST 31, 2009

ITEM F1

PUBLIC HEARING

Reported by: Beverly D. Toms

No. CSR 1662

P R E S E N T

For the Board  
of Equalization:

Betty Yee  
Chair

Steve Shea  
Acting Member

Bill Leonard  
Member

Michelle Steel  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State Controller  
(per Government Code  
Section 7.9)

Diane Olson  
Chief, Board  
Proceedings Division

Board of Equalization  
Staff:

Bradley Heller  
Legal Department

Deborah Cooke  
Legal Department

Kevin Hanks  
Sales and Use Department

Lou Feletto  
Use Fuels Division

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Sacramento, California

August 31, 2009

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MS. OLSON: Okay, our next item on the agenda is F1, Proposed Amendments to Sales and Use Tax Regulation 5237, Board Approval Required for Refunds; and Sales and Use Tax Regulation 5266, Appeals Staff Recommendations, Requests for Reconsideration and Requests for Oral Hearings.

Ms. Yee.

MS. YEE: Good morning, Mr. Heller. Will you refresh our memories on this matter, please.

MR. HELLER: Certainly. Good morning, Madam Chair, Members of the Board. My name is Bradley Heller. I'm an attorney with the -- the Board's Legal Department. I have Deborah Cooke here, also with the Board's Legal Department; Kevin Hanks from the Sales and Use Tax Department; and Lou Feletto from our Use -- our Use Fuels Division. Perfect.

And essentially, first of all, we need to request the Board's adoption of the proposed amendments to Regulation 15 -- excuse me, 5237 and Regulation 5266, which -- which increased the regulatory threshold for staff to approve refunds.

In addition, on Friday we distributed some additional materials that kind of relate back to the Board's discussion back on May 27th. And essentially they kind of outline the various public notice

1 requirements that apply to refunds that are over certain  
2 threshold amounts in all of the Board's different  
3 programs. And the documents also outline the steps the  
4 two departments take in order to approve refunds that  
5 are not submitted for Board approval. They kind of  
6 outline the different documents that are provided to the  
7 taxpayers as well as the different steps that management  
8 takes before a refund's actually issued or a credit's  
9 made for a taxpayer.

10 Finally, we worked with the Department -- I'll  
11 say our Legal Department and the two tax departments  
12 worked together to try to formulate a draft public  
13 notice that we can use for -- for staff-approved refunds  
14 between \$50,000 and \$100,000 and we also tried to add  
15 some language to those notices to kind of provide the  
16 public with some kind of background information about  
17 what the notice entailed, so we added language  
18 explaining why a refund was granted or why a certain  
19 amount of tax was cancelled or a penalty relieved.

20 And so with that we can certainly answer any  
21 questions you have and -- and we do request that the  
22 Board adopt the proposed amendments to the two  
23 regulations today.

24 MS. YEE: Okay. Thank you very much, Mr.  
25 Heller. And I appreciate the late information that came  
26 in on Friday, which actually speaks to the concern that  
27 I had about the regulation, and that is it seemed like  
28 the bulk of our conversation when this was before us the

1 last time was on the issue of public notice, to the  
2 extent that we are delegating these actions.

3 And what I had wanted to see, not in any  
4 specificity as you've outlined in some of the  
5 attachments in your Friday correspondence to us, but  
6 just some reference to public notice so that's not lost  
7 in the regulation.

8 And I don't want to hold up the reg., but it  
9 just seemed like there was a lot of concern about that,  
10 and I'm happy to -- I'd like to just see that added to  
11 the language of the reg., itself.

12 MR. HELLER: Staff can amend the regulation and  
13 bring it back for -- for a Board adoption. I believe  
14 that would go -- I'd have to check to see if we could do  
15 that with the 15-day file.

16 MS. YEE: Is it 15 day?

17 MR. HELLER: I think it should be substantially  
18 related to the Board's current action.

19 MS. YEE: Okay.

20 Discussion or comments, Members?

21 Okay. And I'm happy to suggest just kind of  
22 some general language to be added to the reg., but I  
23 think given the -- the tenor of the discussion we had  
24 when this was last before us, I'd like to see that  
25 memorialized in some fashion in the regulation, itself,  
26 and then certainly backed up by the specific suggestions  
27 that you've made in your recent correspondence to us.

28 Okay. Other comments? Mr. Leonard.

1 MR. LEONARD: Yes, Madam Chair. I'm -- you're  
2 suggesting that we put into our regulations more public  
3 notice of refunds that are being granted?

4 MS. YEE: Just the reference to public notice  
5 actually being provided. But not the specifics of the  
6 detail.

7 MR. HELLER: As I understood it, Mr. Leonard,  
8 it was just to essentially reference the fact that --  
9 that we -- there is a statutory requirement in all --  
10 basically all these programs that would require us to  
11 have a public notice available for ten days before  
12 the -- the decisions become final.

13 And so to just reference that without  
14 necessarily --

15 MS. YEE: Right.

16 MR. HELLER: -- adding a whole lot of --

17 MS. YEE: Right. It just seems to me with  
18 expanded delegation that that kind of is the other --  
19 that we should go ahead and --

20 MR. LEONARD: Okay, that -- that makes sense  
21 for the time being. I -- I don't know who to ask, but  
22 since refunds of overpayments to other California State  
23 agencies aren't required to be noticed in the same way  
24 as the statute requires us to do on our tax programs,  
25 I'd -- I'd like some research done kind of the origins  
26 of these different notice statutes and whether or not  
27 our -- our refund in -- in today's context our  
28 refund notice statute is -- is a violation of -- of

1 taxpayer privacy in a way that other citizens' privacy  
2 is not violated when they get refunds of overpayments to  
3 State agencies, and whether or not we should be  
4 sponsoring legislation in the future that would -- that  
5 would make that law more flexible so we could make  
6 our -- our refund requirements more flexible.

7 MS. YEE: Okay. Maybe perhaps, Ms. Cooke, can  
8 you take a look at this.

9 MS. MANDEL: Do a little historical research.

10 MS. YEE: Yes.

11 MR. LEONARD: Yeah.

12 MS. COOKE: Certainly.

13 MR. LEONARD: I think -- thank you very much.  
14 I mean, if there's -- if there's some public reason  
15 why -- why everybody in California needs to know that  
16 somebody accidentally paid their fuel tax twice, I'm --  
17 I'm open to hearing it.

18 MS. COOKE: Okay.

19 MR. LEONARD: But so far it's kind of the same  
20 as me asking FTB for a refund when I over -- have  
21 over-withheld on my taxes, and that's really nobody  
22 else's business but mine and FTB's.

23 And so, I'm looking for -- I'm looking for  
24 arguments that say we shouldn't be parallel to other --  
25 other agencies.

26 MS. COOKE: Okay.

27 MS. YEE: Okay.

28 MR. LEONARD: But in the meantime this -- I



1 commend the staff and Ms. Yee's leadership in -- in  
2 moving this along to -- to at least expedite as many  
3 refunds as possible.

4 MS. YEE: Okay. And is that a motion?

5 MR. LEONARD: Yes, it is.

6 MS. YEE: Okay. Motion by Mr. Leonard.

7 Is there a second?

8 I'll -- I'll second that motion.

9 Without objection, such will be the order.

10 Thank you very much.

11 MR. HELLER: Thank you very much.

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## REPORTER'S CERTIFICATE

State of California     )  
                                  ) ss  
County of Sacramento    )

I, BEVERLY D. TOMS, Hearing Reporter for the  
California State Board of Equalization certify that on  
August 31, 2009 I recorded verbatim, in shorthand, to  
the best of my ability, the proceedings in the  
above-entitled hearing; that I transcribed the shorthand  
writing into typewriting; and that the preceding 8 pages  
pages constitute a complete and accurate transcription  
of the shorthand writing.

Dated: September 10, 2009.

---

BEVERLY D. TOMS  
Hearing Reporter

**2009 MINUTES OF THE STATE BOARD OF EQUALIZATION****Monday, August 31, 2009**

Action: Upon motion of Mr. Shea, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

**PUBLIC HEARINGS****F1 Approval of Proposed Amendments to Sales and Use Tax Regulation 5237, Board Approval Required for refunds, and, Sales and Use Tax Regulation 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings**

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks regarding the proposed amendments to Regulations 5237 and 5266 to clarify staff's authority to grant or deny certain refunds. (Exhibit 8.4.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board approved the regulation with revisions and referred the regulation to the 15-day file for additional notice and comment.

Mr. Leonard requested staff to research the origin of the requirement to notice the public of refunds and to compare this requirement to that of other agencies.

**[G1] LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Shea, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board made the following orders:

**G1.1 Fouad Mohammed Zamzami, 425054 (CH)**

10-1-03 to 9-30-06, \$22,526.64 Tax, \$2,252.65 Penalty

Action: Redetermine as recommended by the Appeals Division.

**G1.2 Process Construction, Inc., 350404 (KH)**

4-1-02 to 12-31-04, \$2,544.93 Tax

Action: Redetermine as recommended by the Appeals Division.

**G1.3 Gary L. Smith and Michael L. Smith, 379795, 382294, 421897 (KH)**

7-1-01 to 6-30-04 \$176,924.18 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

**Note: These minutes are not final until Board approved.**



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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BETTY T. YEE  
First District, San Francisco

BILL LEONARD  
Second District, Ontario/Sacramento

MICHELLE STEEL  
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

RAMON J. HIRSIG  
Executive Director

June 26, 2009

**To Interested Parties:**

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

***Proposed to Adopt Regulations 5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 proposes to amend California Code of Regulations, title 18, section (Regulation) 5237, *Board Approval Required for Refunds Over \$50,000*. The proposed amendments to Regulation 5237 will implement, interpret, and make specific Revenue and Taxation Code sections 8901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45851, 46501, 50139, 55221, and 60521, which authorize the Board to grant refunds of specified taxes and fees.

The Board, pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 also proposes to amend California Code of Regulations, title 18, section (Regulation) 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. The proposed amendments to Regulation 5266 will implement, interpret, and make specific Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12984, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30282, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443,

38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. These Revenue and Taxation Code sections authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

A public hearing on the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California, at 9:30 a.m., or as soon thereafter as the matter may be heard, on August 31, 2009. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed amendments. In addition, if the Board receives written comments prior to the hearing on August 31, 2009, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 5237 and 5266.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **CURRENT LAW**

The Board is a constitutionally established agency comprised of five elected Board Members, which include the Controller and district Board Members elected from each of the Board's four districts. (Cal. Const., art. XIII, § 17.) The Board Members are authorized to hire an Executive Director and other expert and clerical staff to assist the Board Members in exercising the Board's powers and carrying out the Board's duties. (Gov. Code, §§ 15604, 15605.) The Board Members are also authorized to delegate authority to the Executive Director and other Board staff to exercise powers that are granted to the Board and perform duties imposed upon the Board, unless the delegation is prohibited by law. (Gov. Code, §§ 7, 15604, 15605.)

Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454,

43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581 authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

The Board previously delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceeded \$50,000. The Board previously delegated authority to the Executive Director to grant refunds of duplicate or erroneous electronic funds transfers in excess of \$50,000, which are authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. The Board also previously delegated authority to staff in the Appeals Division of the Board's Legal Department to grant or deny petitions, refunds, and requests for relief (collectively "appeals"), and cancel previously assessed taxes and fees, unless the amounts at issue exceeded \$50,000.

Regulation 5237 prescribes the limits of the Board's prior delegations of authority to the Executive Director and Board staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. Regulation 5237, subdivisions (a) and (f), explain that Sales and Use Tax Department and Property and Special Taxes Department staff's decisions to grant or deny refunds in excess of \$50,000 must be submitted to the Board Members for approval. Regulation 5237, subdivision (d), explains that the Executive Director must approve refunds of duplicate or erroneous electronic funds transfers that exceed \$50,000.

Regulation 5266, subdivision (f), prescribes the limits of the Board's prior delegation of authority to Appeals Division staff to grant or deny appeals and cancel previously assessed taxes and fees when authorized by Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5,

45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. Regulation 5266, subdivision (f), explains that Appeals Division staff's decisions to grant or deny appeals must be submitted to the Board Members for approval if the amount granted exceeds \$50,000.

## **PROPOSED AMENDMENTS**

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The Board also directed Board staff to amend the Board's regulations to incorporate the new delegation.<sup>1</sup>

The Board expanded the authority delegated to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 because the \$50,000 limit on the Board's prior delegation of authority to Board staff had not been revised to reflect inflation occurring over the last 20 years since the limit was first imposed. The Board also expanded the authority delegated to Board staff so that the Board can process refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 more quickly and efficiently, and reduce the credit interest paid on such refunds.

The purpose of the proposed amendments to Regulation 5237, subdivisions (a), (d), and (f), is to clarify that the Board has delegated authority to staff in the Sales and Use Tax Department and Property and Special Taxes Department to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, that do not exceed \$100,000, including refunds of duplicate or erroneous electronic funds transfers, without further approval from the Board Members. The purpose of the proposed amendments to Regulation 5266, subdivision (f), is to clarify that the Board has also delegated authority to Appeals Division staff to grant or deny appeals, and cancel previously assessed taxes, where the amount granted does not exceed \$100,000. The proposed amendments to Regulation 5237 and 5266 are necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny refunds, decide appeals, and cancel prior assessments.

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<sup>1</sup> The Board also voted to delegate authority to Board staff to grant or deny refunds of the Private Railroad Car Tax authorized by Revenue and Taxation Code section 11551, unless the refunds exceed \$100,000. However, Regulations 5237 and 5266 are not being amended as a result of the delegation of authority to grant or deny refunds of Private Railroad Car Tax because neither regulation applies to such refunds.

There are no comparable federal regulations or statutes to Regulation 5237 or 5266 or the proposed amendments to the regulations.

### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments to Regulations 5237 and 5266 do not impose a mandate on local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

The Board has determined that Regulations 5237 and 5266 and the proposed amendments will result in no direct or indirect cost or savings to any state agency, any costs to local agencies or school districts that are required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

### **NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed amendments make Regulations 5237 and 5266 consistent with the Board's May 27, 2009, delegation of authority to Board staff to grant or deny specified refunds of taxes and fees. Therefore, the Board has made an initial determination that the proposed amendments to Regulations 5237 and 5266 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

### **NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the adoption of the proposed amendments to Regulations 5237 and 5266 will neither create nor eliminate jobs in the State of



California nor result in the elimination of existing businesses nor create or expand business in the State of California.

### **NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of the proposed amendments to Regulations 5237 and 5266 will not have a significant effect on housing costs.

### **DETERMINATION REGARDING ALTERNATIVES**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

### **CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax, Counsel III (Specialist), by telephone at (916) 322-5989, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an Initial Statement of Reasons and underscore and strikeout versions of Regulations 5237 and 5266 showing the express terms of the proposed amendments. These documents and all information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations and the Initial Statement of Reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

June 26, 2009

**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE  
SECTION 11346.8**

The Board may adopt the proposed amendments to Regulations 5237 and 5266 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulation 5237 and 5266, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

Sincerely,



Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb

Enclosures

## **Initial Statement of Reasons**

### **Proposed Amendments to California Code of Regulations, Title 18, Sections:**

***5237, Board Approval Required for Refunds Over \$50,000; and  
5266, Appeals Staff Recommendations; Requests for  
Reconsideration; Requests for Oral Hearings***

#### **SPECIFIC PURPOSE AND NECESSITY**

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny refunds of taxes and fees authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$100,000. The specific purpose of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5237 is to clarify that, as a result of the May 27, 2009, vote, the Board has delegated authority to staff in the Board's Sales and Use Tax Department and Property and Special Taxes Department to grant or deny the specified refunds, without further approval from the Board Members. The specific purpose of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 5266 is to clarify that, as a result of the May 27, 2009, vote, the Board has also delegated authority to Appeals Division staff to grant or deny petitions, claims for refund, and requests for relief, and cancel previously issued assessments, unless the amount granted exceeds \$100,000. The Board has determined that the proposed amendments to Regulations 5237 and 5266 are reasonably necessary to make the regulations consistent with the Board's current delegation of authority to Board staff to grant or deny the specified refunds.

#### **DOCUMENTS RELIED UPON**

The Board relied upon a May 7, 2009, memorandum from Ms. Randy L. Henry, the Deputy Director of the Board's Sales and Use Tax Department, to Mr. Raymond J. Hirsig, the Board's Executive Director, in deciding to delegate additional authority to Board staff to grant or deny claims for refund and proposing that Regulations 5237 and 5266 be amended to make them consistent with the new delegation. The memorandum contained background information regarding the Board's prior, 1989 delegation of authority to Board staff to grant or deny refunds, unless the refunds exceed \$50,000, and the memorandum is available on the Board's Website at [http://www.boe.ca.gov/meetings/pdf/Item\\_P3a1\\_052709.pdf](http://www.boe.ca.gov/meetings/pdf/Item_P3a1_052709.pdf).

## **ALTERNATIVES CONSIDERED**

The Board considered, but did not approve, three alternative delegations of authority to Board staff and three conforming regulatory actions, on May 27, 2009. The first alternative would have delegated authority to Board staff to grant or deny refunds authorized by Revenue and Taxation Code sections 6901, 8126, 9151, 11551, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, unless the refunds exceed \$250,000. The second alternative would have delegated authority to Board staff to grant or deny such refunds regardless of the dollar amount. The third alternative would have made no change to the Board's prior, 1989 delegation of authority to Board staff to grant or deny refunds, unless the refunds exceed \$50,000. (The alternatives are described in more detail in the May 7, 2009, memorandum.)

The Board did not approve the third alternative, which would have left the 1989 delegation of authority and Regulations 5237 and 5266 unchanged, because the \$50,000 limit on the 1989 delegation of authority needed to be increased to account for inflation. The Board did not approve the first and second alternatives, which would have increased the \$50,000 limit on the Board's 1989 delegation of authority to \$250,000 or eliminated the \$50,000 limit, respectively, because the Board wanted to increase Board staff's delegated authority more incrementally.

## **NO ADVERSE ECONOMIC IMPACT ON BUSINESS**

The proposed amendments make Regulations 5237 and 5266 consistent with the Board's May 27, 2009, delegation of authority to Board staff to grant or deny specified refunds of taxes and fees. Therefore, the Board has determined that the proposed amendments make the Board's internal processing of refunds more efficient and will not have a significant adverse economic impact on business.

**5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER ~~\$50,000~~  
\$100,000.**

- (a) If Board Staff in the assigned section or group determines that a refund in excess of ~~\$50,000~~ \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Board.
- (b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.
- (c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).
- (d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of ~~\$50,000~~ \$100,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.
- (e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.
- (f) If Board Staff in the assigned section determines that a refund in excess of ~~\$50,000~~ \$100,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

**Note:** Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, 60521.

**5266. APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR ORAL HEARINGS.**

(a) Appeals Staff may make the following recommendations in the Decision and Recommendation:

- (1) Deny the petition, claim, or request for relief in its entirety.
- (2) Grant the petition, claim, or request for relief in its entirety.
- (3) Grant the petition, claim, or request for relief in part.
- (4) That Board Staff in the appropriate Department re-audit the issues raised in the petition, claim, or request for relief as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued.

(2) Disagree and file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

(A) If an oral hearing is or was requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or supplemental Decision and Recommendation) Board Staff will:

- (i) Contact the petitioner, claimant, or person requesting relief to inquire as to the existence of such disagreement; and
- (ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.

(3) Agree with the Decision and Recommendation.

(c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Department represented at the appeals conference, and any state agency represented at the appeals conference, may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief within 30 days after the Decision and Recommendation was issued.

(2) Agree with the Decision and Recommendation.

(d) Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any state agency represented at the appeals conference may file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. If an oral hearing is requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(e) If Appeals Staff receive a request for reconsideration, Appeals Staff will prepare a Supplemental Decision and Recommendation addressing any new information provided in the request for reconsideration, copies of which will be sent to all parties. Appeals Staff may also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c).

(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds ~~\$50,000~~\$100,000, the recommendation will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452,

43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353,  
45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302,  
46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4,  
50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044,  
55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224,  
55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501,  
60502, 60506, 60507, 60521, 60522, 60581.



## **Regulation History**

**Type of Regulation:** Sales and Use Tax

**Regulations:** 5237 and 5266

**Title:** 5237, *Board Approval Required for Refunds Over \$50,000*; and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*

**Preparation:** Brad Heller

**Legal Contact:** Brad Heller

Staff request for authorization to publish a proposed amendment to Regulations 5237 and 5266 consistent with the current delegation of authority to staff to grant or deny refunds.

### **History of Proposed Regulation:**

August 31, 2009	Public hearing
August 24, 2009	45-day public comment period ends
June 26, 2009	OAL publication date; 45-day public comment period begins; IP mailing
June 15, 2009	Notice to OAL
May 27, 2009	Other Administrative Matters, Board Authorized Publication (vote 5 -0)

**Sponsor:** NA

**Support:** NA

**Oppose:** NA

**REVISED ESTIMATE OF COST OR SAVINGS RESULTING  
FROM PROPOSED REGULATORY ACTION**

***Proposed Amendment of Sales and Use Tax Regulations 5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings***

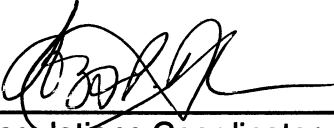
**STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING**


The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement  
Prepared by  Date 11/13/09  
Regulations Coordinator

Approved by  Date 11/16/09  
Chief Counsel

**NOTE: SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.**

Board Proceedings Division  
10/7/05

**ECONOMIC AND FISCAL IMPACT STATEMENT****(REGULATIONS AND ORDERS)**

p. 399 (REV. 12/2008)

**See SAM Section 6601 - 6616 for Instructions and Code Citations**

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 5237, Board Approval Required for Refunds Over \$50,000		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)**

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits.): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)**

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

d. Describe other economic costs that may occur: \_\_\_\_\_

## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

### C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_

2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: \_\_\_\_\_

3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

### D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain: \_\_\_\_\_

### E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ \_\_\_\_\_

Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 1: \$ \_\_\_\_\_

Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 2: \$ \_\_\_\_\_

Cost-effectiveness ratio: \$ \_\_\_\_\_

### FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)

\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

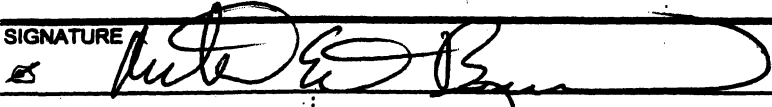


- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE 	TITLE Regulations Coordinator
AGENCY SECRETARY <sup>1</sup> APPROVAL/CONCURRENCE 	DATE 6/15/09
DEPARTMENT OF FINANCE <sup>2</sup> APPROVAL/CONCURRENCE  Exempt under SAM section 6660	DATE

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

**ECONOMIC AND FISCAL IMPACT STATEMENT****(REGULATIONS AND ORDERS)**

D. 399 (REV. 12/2008)

**See SAM Section 6601 - 6616 for Instructions and Code Citations**

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 5266, Appeals Staff Recommendations; Requests for Reconsideration;		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)**

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits.): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)**

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

d. Describe other economic costs that may occur: \_\_\_\_\_

## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

### C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_

2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: \_\_\_\_\_

3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

### D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain: \_\_\_\_\_

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.



## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 1: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 2: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

### FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

☒ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

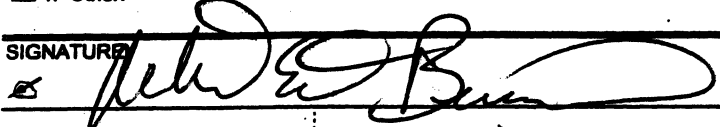


- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$\_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$\_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$\_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$\_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE 		TITLE Regulations Coordinator
AGENCY SECRETARY <sup>1</sup>		DATE
APPROVAL/CONCURRENCE	 PROGRAM BUDGET MANAGER	6/15/2009
DEPARTMENT OF FINANCE <sup>2</sup>		DATE
APPROVAL/CONCURRENCE	 Exempt under SAM section 6660	

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

50 N STREET, SACRAMENTO, CALIFORNIA  
J BOX 942879, SACRAMENTO, CALIFORNIA 94279-0081  
916-322-2270 • FAX 916-324-3984  
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Third District, Rolling Hills Estates

JOHN CHIANG  
State Controller

STEVE SHEA  
Acting Member  
Fourth District, Los Angeles

RAMON J. HIRSIG  
Executive Director

September 18, 2009

**Notice of Proposed Regulatory Action**

**The State Board of Equalization Proposes to Adopt Revised Amendments to California Code of Regulations, Title 18, Sections:**

**5237, BOARD APPROVAL REQUIRED FOR REFUNDS OVER \$50,000; and  
5266, APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION;  
REQUESTS FOR ORAL HEARINGS**

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 has proposed to amend California Code of Regulations, title 18, section (Regulation) 5237, *Board Approval Required for Refunds Over \$50,000*. The proposed amendments to Regulation 5237 will implement, interpret, and make specific Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, which authorize the Board to grant refunds of specified taxes and fees.

The Board, pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 has also proposed to amend Regulation 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. The proposed amendments to Regulation 5266 will implement, interpret, and make specific Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404,

32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. These Revenue and Taxation Code sections authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

A public hearing on the proposed amendments to Regulation 5237 and 5266 was held in Room 121, 450 N Street, Sacramento, California, on August 31, 2009. No interested parties asked to speak at the public hearing or submitted written comments on the proposed amendments.

However, the proposed amendments to Regulations 5237 and 5266 authorized Board staff to approve refunds and cancellations over \$50,000. Revenue and Taxation Code sections 6901, 6981, 8126, 8191, 9151, 9196, 12951, 12977, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, 46501, 46551, 50139, 50151, 55221, 55281, 60521, and 60581 require the Board to make a public record of decisions to grant refunds, credits, and cancellations over \$50,000 available for at least 10 days before the decisions are effective. Also Revenue and Taxation Code section 45801 requires the Board to make a public record of decisions to cancel amounts over \$15,000, which were determined under the Integrated Waste Management Fee Law, available for at least 10 days before the decisions are effective. Therefore, the Board referred the proposed amendments to Regulations 5237 and 5266 to the 15-day file and directed staff to add language incorporating the public record requirements.

Enclosed are revised versions of the proposed amendments to Regulations 5237 and 5266. The original proposed amendments are still noted with single underscore and strikeout. The revisions to the proposed amendments, which incorporate the public record requirements, are noted with double underscore. In accordance with Government Code section 11346.8, subdivision (c), the revised versions of the proposed amendments are being placed in the rulemaking file and mailed to interested parties who commented orally or in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, CA 95814.

The revised versions of the proposed amendments will be placed on the October 6, 2009, Board meeting agenda for the Board's consideration and potential adoption. Interested persons may present or submit oral or written statements, arguments, or contentions regarding the revised versions of the proposed amendments. In addition, if the Board receives written comments prior to its consideration of the proposed amendments on October 6, 2009, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 5237 and 5266. Furthermore, any written comments received

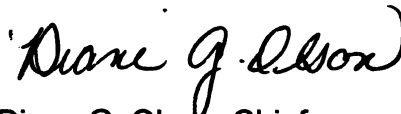
September 18, 2009

prior to October 6, 2009, regarding the revised versions of the proposed amendments must be responded to in the final statement of reasons required by Government Code section 11346.9.

Questions regarding the substance of the revised versions of the proposed amendments should be directed to Bradley M. Heller, Tax, Counsel III (Specialist), by telephone at (916) 324-2657, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Toya Davis, Regulations Coordinator, by telephone at (916) 327-1798, by fax at (916) 324-3984, by e-mail at [Toya.Davis@boe.ca.gov](mailto:Toya.Davis@boe.ca.gov), or by mail at State Board of Equalization, Attn: Toya Davis, MIC:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane G. Olson".

Diane G. Olson, Chief  
Board Proceedings Division

DO:tpd  
Enclosure

**Proposed Amendments to California Code of Regulations,  
Title 18, Sections 5237 and 5266**

**5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER ~~\$50,000~~  
\$100,000.**

(a) If Board Staff in the assigned section or group determines that a refund in excess of ~~\$50,000~~ \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Board.

(b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.

(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).

(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of ~~\$50,000~~ \$100,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.

(e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.

(f) If Board Staff in the assigned section determines that a refund in excess of ~~\$50,000~~ \$100,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

(g) If Board Staff determines that a refund in excess of \$50,000 should be granted and the determination is not required to be submitted to the Board, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, 60521.

**5266. APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR ORAL HEARINGS.**

(a) Appeals Staff may make the following recommendations in the Decision and Recommendation:

- (1) Deny the petition, claim, or request for relief in its entirety.
- (2) Grant the petition, claim, or request for relief in its entirety.
- (3) Grant the petition, claim, or request for relief in part.
- (4) That Board Staff in the appropriate Department re-audit the issues raised in the petition, claim, or request for relief as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued.

(2) Disagree and file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

(A) If an oral hearing is or was requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or supplemental Decision and Recommendation) Board Staff will:

- (i) Contact the petitioner, claimant, or person requesting relief to inquire as to the existence of such disagreement; and
- (ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.

(3) Agree with the Decision and Recommendation.

(c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Department represented at the appeals conference, and any state agency represented at the appeals conference, may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief within 30 days after the Decision and Recommendation was issued.

(2) Agree with the Decision and Recommendation.

(d) Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any state agency represented at the appeals conference may file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. If an oral hearing is requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(e) If Appeals Staff receive a request for reconsideration, Appeals Staff will prepare a Supplemental Decision and Recommendation addressing any new information provided in the request for reconsideration, copies of which will be sent to all parties. Appeals Staff may also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c).

(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds ~~\$50,000~~\$100,000, the recommendation will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.

(g) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that an amount that exceeds \$50,000 be refunded, credited or canceled and the recommendation does not require Board approval, the proposed determination to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date. If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that an amount that exceeds \$15,000, which was determined pursuant to the Integrated Waste Management Fee Law, be canceled and the recommendation does not require Board approval, the proposed determination to cancel such amount must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference:



Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

## **Regulation History**

**Type of Regulation:** Sales and Use Tax

Regulations: 5237 and 5266

Title: 5237, *Board Approval Required for Refunds Over \$50,000*; and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*

**Preparation:** Bradley M. Heller

**Legal Contact:** Bradley M. Heller

Staff request for adoption of proposed amendments to Regulations 5237 and 5266 to make them consistent with the current delegation of authority to staff to grant or deny refunds.

### **History of Proposed Regulation:**

October 3, 2009: 15-day public comment period ends

September 18, 2009: 15-day public comment letter and revised text e-mailed & mailed to Interested Parties; start of public comment period

August 31, 2009 Public hearing - Board requested sufficiently related changes; submitted 15-day file (vote 5-0)

August 24, 2009 45-day public comment period ends

June 26, 2009 OAL publication date; 45-day public comment period begins; IP mailing

June 15, 2009 Notice to OAL

May 27, 2009 Other Administrative Matters, Board authorized publication (vote 5 -0)

**Sponsor:** NA

**Support:** NA

**Oppose:** NA

## Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Tax Regulations 5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings , did comply with the provision of Government Code section 1346.8(c) and section 44 of Title 1, California Code of Regulations. The 15-day letter and the changed version of Regulation 5237 and 5266 were mailed on September 18, 2009, to interested parties who commented orally or in writing or that requested such information and were made available for public comment from September 18 to October 6, 2009, a period of 18 days prior to the public hearing.

January 19, 2009



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Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization

## Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Tax Regulations 5237, Board Approval Required for Refunds Over \$50,000; and 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings , did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on September 18, 2009, 18 days prior to the public hearing.

November 13, 2009



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Toya P. Davis  
Regulations Coordinator  
State Board of Equalization

**2009 MINUTES OF THE STATE BOARD OF EQUALIZATION****Tuesday, October 6, 2009****[H3] HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY****H3.1 Guip V. Nguyen, 431698**

2007, \$1.00 or more

Considered by the Board: September 22, 2009

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board.

**[I2] OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *James E. Jackson; Bahram Behmanesh and Darlene H. Behmanesh*; and, *Juan Cobian Ruesga/Ruesga, Inc.*; as recommended by staff.

**CHIEF COUNSEL MATTERS****[J] RULEMAKING****J1 Adoption of Proposed Amendments to Rules for Tax Appeals Regulation 5237, BOARD APPROVAL REQUIRED FOR REFUNDS OVER \$50,000, and Rules for Tax Appeals Regulation 5266, APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR ORAL HEARINGS**

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks. The revised versions of the proposed amendments make Regulations 5237 and 5266 consistent with the current delegation of authority to staff to grant or deny refunds. Mr. Heller also discussed the public record requirement with respect to Regulations 5237 and 5266. (Exhibit 10.2.)

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments to Regulations 5237 and 5266 as published.

**[M] OTHER CHIEF COUNSEL MATTERS****Loeffler v. Target Corp., California Supreme Court Case No. S173972**

Ms. Mandel stated that she would not participate in this matter in accordance with Government Code section 87105 and left the Boardroom.



BOARD APPROVED

At the October 6, 2009 Board Meeting
Diane G. Olson, Chief  
 Board Proceedings Division

# Memorandum

To: Honorable Betty T. Yee, Chairwoman  
 Honorable Bill Leonard  
 Honorable Michelle Steel  
 Honorable Jerome E. Horton  
 Honorable John Chiang

Date: September 21, 2009

From: Kristine Cazadd  
 Chief Counsel

*Kristine Cazadd/RMF*

Subject: **Chief Counsel Matters – Rulemaking – Item J 1.**  
**Policy for Staff Compliance with Public Record Requirement for Refunds Over \$50,000.**

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny credits, cancellations, and refunds (for ease of expression, hereafter, collectively, refunds) authorized by Revenue and Taxation Code sections<sup>1</sup> 6901, 6981, 8126, 8191, 9151, 9196, 11551, 11596, 12951, 12977, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, 45801, 46501, 46551, 50139, 50151, 55221, 55281, 60521, and 60581 unless the refunds exceed \$100,000. Board staff proposed amendments to Regulations 5237 and 5266 to incorporate the Board's May 27, 2009, delegation.<sup>2</sup>

During the August 31, 2009, public hearing on the proposed amendments, the Board noted that sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 require proposed decisions to grant refunds in excess of \$50,000 to be available as public records for at least 10 days before the decisions are effective. The Board directed staff to make sufficiently related changes to Regulations 5237 and 5266 to ensure that the Board's staff complies with the public record requirements and staff will be asking the Board to adopt the revised regulations on October 6, 2009. The Board also asked for more background information regarding the public record requirements in order to establish a consistent policy for staff compliance and determine whether the Board should recommend that the public record requirements be amended or repealed. The remainder of this memorandum contains the background information regarding the public record requirements and recommends that staff's public records of refunds over \$50,000 contain:

1. The taxpayer's name;
2. The taxpayer's appeal case identification number;
3. The type of action (refund, credit, or cancellation);
4. The relevant program (Sales and Use Tax or Special Taxes); and

<sup>1</sup> Subsequent section references are to the Revenue and Taxation Code unless otherwise indicated.

<sup>2</sup> Regulations 5237 and 5266 are not being amended to reflect the Board's delegation of authority to Board staff to grant or deny refunds under the Private Railroad Car Tax Law because neither regulation applies to such refunds.

5. The department office code, when relevant.

This is the same information currently provided in the Public Agenda Notice, the "10-day public record" of the Board's proposed decisions to grant refunds over \$50,000. This memorandum also recommends that the Board continue its current policy and that "10-day public records" of Consumer Use Tax Section cancellations over \$50,000 involving vehicles, vessels, and aircraft contain the taxpayer's account number, the taxpayer's appeal case identification number, and the amount of the proposed cancellation.

### **Background Information on Public Record Requirements**

#### *Prior to 1994*

Prior to 1994, the Board was not authorized to approve refunds in excess of \$50,000 pursuant to sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. If the Board decided that a refund in excess of \$50,000 was warranted, the Board was required to "certify to the State Board of Control<sup>3</sup> the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid." Then, if the Board of Control (BOC) approved the refund, the Board was authorized to cause a refund to be issued to the taxpayer.<sup>4</sup>

The Legal Department has not been able to find historical documentation explaining exactly how the Board complied with the certification and BOC approval requirements. However, we understand that section 19302 previously imposed the same certification and BOC-approval requirements on the Franchise Tax Board (FTB) and that the certification and approval process worked as follows:

- The FTB submitted refund schedules to the BOC at least 20 days before a scheduled BOC meeting;
- The refund schedules listed the amounts over \$50,000 the FTB decided to refund, provided the names and FTB account numbers of the taxpayers who would receive the refunds, and certified that the refunds were true, correct, and in accordance with the law;
- The BOC consistently approved the refund schedules based on the FTB's certification because the BOC could not independently verify whether refunds were true or correct and the BOC did not have express authority to independently refuse to approve properly certified refunds; and
- The BOC approved the FTB's refund schedules during public meetings and the refund schedules became disclosable public records as a result.<sup>5</sup>

Based upon this information, the Legal Department believes that the Board complied with its certification and BOC-approval requirements by preparing similar refund schedules and that the Board's refund schedules also became disclosable public records.

*Assembly Bill 3069 (1993-94 Reg. Sess.)*

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<sup>3</sup> The Board of Control is now called the Victim Compensation and Government Claims Board.

<sup>4</sup> See, for example, Attachment A: Section 6901 Prior to 1994 Amendments.

<sup>5</sup> See Attachment B: Section 19302 as approved on June 15, 1993; and Attachment C: FTB Analysis of Assembly Bill 3069 (1993-94 Reg. Sess.), p. 8.

The BOC's budget was significantly cut for fiscal year 1992-1993 and this reduced the BOC's staff from 24 to 15 persons. To make the BOC more efficient, the Legislature sought to eliminate any nonessential BOC functions and introduced Assembly Bill (AB) 3069 (1993-1994 Reg. Sess.) on February 22, 1994.<sup>6</sup> As relevant here, AB 3069 proposed to: (1) eliminate the requirement that the Board and the FTB obtain BOC approval for refunds over \$50,000; (2) require the Board to make a proposed decision to grant a refund over \$50,000 "available as a public record for at least 10 days prior to" its effective date;<sup>7</sup> and (3) prohibit the FTB from issuing refunds over \$50,000 until:

[the FTB] certifies that the amount of the refund is true, correct, and in accordance with law, and makes the taxpayer's name, refund amount, the purpose of the appropriation, and the statutory authority for the disbursement available as a public record, at a place designated by the executive officer, at least 10 days prior to the date upon which the amount is to be refunded.<sup>8</sup>

*Statutes 1994, Chapter 726*

The final version of AB 3069 was enacted as Statutes 1994, chapter 726. The final version of AB 3069 included the proposed provisions to: (1) eliminate the requirement that the Board and the FTB obtain BOC approval for refunds over \$50,000; and (2) require the Board to make a proposed decision to grant a refund over \$50,000 "available as a public record for at least 10 days prior to" its effective date.<sup>9</sup> However, the final version of AB 3069 did not include the provisions prohibiting the FTB from issuing refunds over \$50,000 until it complied with the certification and public record requirements quoted above<sup>10</sup> because they were opposed by the FTB.

The legislative history reflects that in opposition, the FTB argued that it was prohibited from disclosing confidential taxpayer information in the assessment of deficiencies regardless of their size and that the return of taxpayers' "money should not be an issue subject to public disclosure."

The FTB further asserted that it did not have to disclose confidential taxpayer information to grant refunds of \$50,000 or less, that refunds over \$50,000 were no different from smaller refunds, and that the FTB could not see any reason the larger refunds should be made public. The FTB also questioned the purpose of disclosing confidential taxpayer information pertaining to refunds over \$50,000 because the required disclosure would not give the public enough information to review the FTB's decisions and the law did not provide the public with any means to question the FTB's decisions to grant refunds over \$50,000 or prevent the FTB from issuing refunds over \$50,000.<sup>11</sup>

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<sup>6</sup> AB 3069 reintroduced provisions of AB 2051 (1993-94 Reg. Sess.), which was originally vetoed for unrelated reasons.

<sup>7</sup> See, for example, AB 3069, section 23, as introduced on February 22, 1994, available at: [http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab\\_3051-3100/ab\\_3069\\_bill\\_940222\\_introduced](http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_3051-3100/ab_3069_bill_940222_introduced).

<sup>8</sup> See AB 3069, section 35, as introduced on February 22, 1994.

<sup>9</sup> See, for example, Statutes 1994, chapter 726, section 23 available at: [http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab\\_3051-3100/ab\\_3069\\_bill\\_940922\\_chaptered](http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_3051-3100/ab_3069_bill_940922_chaptered).

<sup>10</sup> See Statutes 1994, chapter 726, section 35.

<sup>11</sup> See Attachment C: FTB Analysis of Assembly Bill 3069 (1993-94 Reg. Sess.), pp. 8 and 9.



**Staff Recommendation for Compliance with Public Record Requirements***Scope of Public Record Exception*

The Board is prohibited from disclosing confidential taxpayer information pursuant to a number of program-specific Revenue and Taxation Code provisions,<sup>12</sup> and is even prohibited from disclosing the fact that certain taxpayers are registered with the Board.<sup>13</sup> The Government Code prohibits the Board from disclosing certain information concerning the business affairs of companies that report to the Board.<sup>14</sup> In addition, the Board-specific confidentiality provision in the Information Practices Act<sup>15</sup> limits the personal information the Board may disclose to the public concerning individual taxpayers.

The statutes requiring the Board to make decisions to grant refunds over \$50,000 available as public records for at least 10 days prior to their effective dates expressly authorize the disclosure of some taxpayer information and represent express exceptions to the above-referenced confidentiality statutes where applicable. The Legal Department has reviewed the legislative history for AB 3069 and tried to determine whether the Legislature expressed any intent about the information that should be included in the Board's public records of decisions to grant refunds over \$50,000, but could not find any documentation specifying the type of public records the Legislature wanted. Therefore, the Legal Department believes that it is within the Board's discretion to interpret the public record requirement in light of the state's overall policy in favor of taxpayer confidentiality.

*Current Public Records*

The Board currently uses two "10-day public records" to comply with the public record requirement. The primary "10-day public record" is the Public Agenda Notice, which contains the taxpayer's name and appeal case identification number, the type of action (refund, credit, or cancellation), the relevant program (Sales and Use Tax or Special Taxes), and the relevant department office code.<sup>16</sup> The other "10-day public record" is a memorandum from the Petitions Section to the Board Proceedings Division listing the Consumer Use Tax Sections' (CUTS) proposed decisions to cancel consumer use tax determinations over \$50,000 involving vehicles, vessels, and aircraft,<sup>17</sup> which is prescribed by Operations Memorandum 1110 for public release.<sup>18</sup> The CUTS memorandum contains the taxpayer's account number,<sup>19</sup> the taxpayer's appeal case identification number, and the amount of the proposed cancellation and protects the identity of consumers who are not required to register with the Board.<sup>20</sup> Both documents represent permissible interpretations of the public record requirement and illustrate ways in which the Board has interpreted the public record requirement in light of the strong policy considerations in favor of preserving taxpayer confidentiality whenever possible.

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<sup>12</sup> See, for example, section 7056.

<sup>13</sup> See, for example, section 55381.

<sup>14</sup> Government Code section 15619.

<sup>15</sup> Civil Code section 1798.69.

<sup>16</sup> For sales and use tax matters, the relevant district office is referenced (e.g., BH, KH, OH, etc.). For special taxes and fees matters, the office codes are: Environmental Fees (EF), Excise Taxes (ET), and Fuel Taxes (MT).

<sup>17</sup> See Attachment D, example of CUTS public record.

<sup>18</sup> See Attachment E, Operations Memorandum 1110 for public release.

<sup>19</sup> Note: These taxpayers are not required to register with the Board. Because their account numbers are created solely for purposes of the CUTS determinations the public cannot use the account numbers to identify specific taxpayers.

<sup>20</sup> The identity of registered taxpayers and fee payers is generally disclosable. (See, e.g., § 7056.)

*Staff Recommendation*

In order for Board staff to comply with the public record requirement without unnecessarily disclosing confidential taxpayer information, the Legal Department now recommends that Board staff's public records for the newly delegated refunds contain:

1. The taxpayer's name;
2. The taxpayer's appeal case identification number;
3. The type of action (refund, credit, or cancellation);
4. The relevant program (Sales and Use Tax or Special Taxes); and
5. The department office code, when relevant.

The Legal Department also recommends that the Board continue its current policy with regard to CUTS cancellations over \$50,000 involving vehicles, vessels, and aircraft.

This recommendation is consistent with the level of detail provided in the Board's current "10-day public records" for the same types of refunds. For illustrative purposes, Attachment F to this memorandum contains a draft public record of sales and use tax refunds, credits, and cancellations and includes a brief explanation of the terms refunds, credits, and cancellations.

**Pros and Cons of Public Record Requirement**

Because it appears to be a matter of public policy with administrative, but no direct legal implications, the Legal Department does not have an opinion regarding whether the Revenue and Taxation Code should continue to contain public record requirements for refunds (or cancellations) over \$50,000. However, it should be noted that:

- The public record requirements provide the public with the only information they can see regarding refunds over \$50,000 that are approved with regard to a number of otherwise confidential tax and fee programs (e.g., sales and use taxes, timber yield tax, etc.); but
- There does not appear to be any compelling legal justification for disclosing taxpayer information with regard to some, but not all refunds, and the public record requirements do not provide the public with sufficient information to make substantive public oversight possible, even if such oversight were appropriate.

**Conclusion**


The Legal Department recommends that the Board adopt the revised versions of the proposed amendments to Regulations 5237 and 5266, which incorporate the public record requirements for refunds over \$50,000. The Legal Department recommends that Board staff's public records for the newly delegated refunds contain:

1. The taxpayer's name;
2. The taxpayer's appeal case identification number;
3. The type of action (refund, credit, or cancellation);
4. The relevant program (Sales and Use Tax or Special Taxes); and
5. The department office code, when relevant.

The Legal Department also recommends that the Board continue its current policy with regard to CUTS cancellations over \$50,000 involving vehicles, vessels, and aircraft. The Legal Department does not have an opinion regarding whether the Revenue and Taxation Code should continue to contain public record requirements for refunds (or cancellations) over \$50,000.

If you need more information or have any questions, please contact Tax Counsel III (Specialist) Bradley Heller at (916) 324-2657.

Approved:

  
Ramon J. Hirsig  
Executive Director

KEC:bh:yg

J:/Chief Counsel/Finals/Regulation 5237.Memo.doc

J:/Bus/Use/Finals/Heller/Regulation 5237.Memo.doc

#### Attachments

cc:	Mr. Ramon Hirsig	MIC: 73
	Ms. Randie Henry	MIC: 43
	Mr. David Gau	MIC: 63
	Mr. Randy Ferris	MIC: 82
	Mr. Bradley Heller	MIC: 82
	Ms. Deborah Cooke	MIC: 82

Attachment A: Section 6901 Prior to 1994 Amendments

1992 REGULAR SESSION  
CHAPTER 708 (Assembly Bill No. 3225)

Approved by Governor September 14, 1992.

**Relevant Text:** The people of the State of California do enact as follows:

SECTION 1. Section 6901 of the Revenue and Taxation Code is amended to read:

If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify to the State Board of Control the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the State Board of Control the excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors.

The board, however, without obtaining approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors, if a determination by the board is made in any of the following cases:

- (a) An amount of tax, interest, or penalty not exceeding fifty thousand dollars (\$ 50,000) was not required to be paid.
- (b) Any amount of prepayment of sales tax, interest, or penalty paid pursuant to Article 1.5 (commencing with Section 6480) of Chapter 5 was not required to be paid.
- (c) Any amount that is approved as a settlement pursuant to section 7093.5.

Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to Article 1 (commencing with Section 6201) of Chapter 3 shall be credited or refunded by the state to the purchaser.

Attachment B: Section 19302 as Approved on June 15, 1993

1993 REGULAR SESSION  
CHAPTER 31 (Senate Bill No. 3)

Approved by Governor June 15, 1993.

**Relevant Text:** The people of the State of California do enact as follows:

[¶] . . . [¶]

SECTION 26. Part 10.2 (commencing with Section 18401) is added to Division 2 of the Revenue and Taxation Code, to read:

[¶] . . . [¶]

§ 19302.

(a) Except as provided in subdivision (b), if the Franchise Tax Board determines that the taxpayer paid an amount not required to be paid under this part, the Franchise Tax Board without obtaining the approval of the State Board of Control, shall set forth that fact in its records and may either credit the amount on any amounts then due and payable under this part from the taxpayer by whom the amount was paid or refund the amount or the balance to the taxpayer or the taxpayer's successors, administrators, or executors.

(b) No refund exceeding fifty thousand dollars (\$ 50,000) shall be allowed or made until approved by the State Board of Control. Notwithstanding the preceding sentence, State Board of Control approval shall not be required with respect to a refund resulting from withholding, payment of estimated tax, or prepayment of taxes, or a rate determination pursuant to Section 23186.1 (relating to bank and financial corporation rates) for the taxable year, or from a settlement approved pursuant to Section 19442.

## BILL ANALYSIS

Author: \_\_\_\_\_ Analyst: \_\_\_\_\_ Bill Number: \_\_\_\_\_  
Related Bills: See Legislative Telephone: \_\_\_\_\_ Amended Date: \_\_\_\_\_  
History Attorney: \_\_\_\_\_ Sponsor: \_\_\_\_\_

**SUBJECT:**

Frazee

Gloria McConnell

AB 3069

369-4336

Orig.

02/22/94

Geoff Way

Board of Control

Functions Affecting the Board of Control

**DEPARTMENTS THAT MAY BE AFFECTED:**

STATE MANDATE		GOVERNOR'S APPOINTMENT		GOVERNOR'S OFFICE USE
Department Director Position:	Agency Secretary Position:			
<input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR	<input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> S <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR			Position Approved _____ Position Disapproved _____ Position Noted _____ By: _____ Date: _____
Department Director	Date	Agency Secretary	Date	

## Board of Equalization

### INTRODUCTION

Under this bill, as it impacts the Franchise Tax Board (FTB) and the Board of Control (BOC), the following would occur. Each provision is discussed separately in this analysis on the page indicated:

- 1) If the authority is delegated by the BOC, the FTB could negotiate and pay or reject certain money or damage claims for contracts or injuries associated with the FTB. The amount paid or rejected could be negotiated based on equity but under the delegated authority could not exceed \$1,000.....page 2

- 2) If authorized by BOC, FTB could increase from \$50 to \$250 the dollar amount it can refrain from collecting (write-off). The amounts at issue are taxes, fees or other money owed the state.....page 4
- 3) Prior year homeowners/renters assistance (HRA) refund claims filed with FTB would be paid by the Controller from current year funds without approval by BOC.....page 5
- 4) The FTB would certify and make public for at least 10 days prior to issuance, certain personal income tax (PIT) and bank and corporation tax (BCT) refund determinations, instead of BOC approving and publicly disclosing the refund determination (Amendments are attached as further discussed).....page 5
- 5) The FTB, itself, would approve PIT and BCT binding closing agreements, instead of the BOC.....page 8

#### EFFECTIVE DATE

Because this bill is an urgency measure, the above provisions would be effective upon enactment.

#### LEGISLATIVE HISTORY

AB 2051 (Frazee, 1993/94)

#### POSITION

Support if amended to remove the provision that requires the FTB to publicly disclose tax refund information (Above item 4; see page 9).

\*\*\*\*\*

- 1) Payment/Rejection of Money or Damage Claims.

#### SUMMARY

The FTB could negotiate and pay or reject money or damage claims for contracts or injuries associated with FTB. The negotiation could be based on equity but under the delegated authority could not exceed \$1,000.

#### SPECIFIC FINDINGS

**Currently**, refund claims filed by taxpayers under the Personal Income Tax Law (PITL) or Bank and Corporation Tax Law (BCTL) are acted on by the FTB based on the law. If the claim is denied, the Government Code permits the taxpayer to file a claim against the State with the BOC.

When employees of the State or other persons bring a damage action against the State (e.g., damages to personal cars parked in a State parking lot, or damages to clothing while on the job, or unpaid moving expenses),



the employee or other person files a claim against the State with the BOC.

Claims are filed with the BOC because it is authorized to consider equity issues in making its determination. During the equity claim process, BOC asks for FTB's recommendation. Although this is an equity procedure, FTB staff is required to make "equity" recommendations based on law, without regard to equity. According to BOC staff, even though an FTB recommendation does not take into account equity issues, the BOC generally follows the agency's recommendation, and the claimant's recourse from a denial of the claim is litigation through the appropriate court.

**Under current law**, BOC can delegate to any state agency the authority to adjust and pay any claims where the adjustment is under \$100. FTB does not act on claims under this authority.

**Under this provision**, BOC could authorize FTB to negotiate and pay or reject money or damage claims for contracts or injuries where the payment or rejection is \$1,000 or less. This delegation includes BOC's authority to make decisions based on equity. The FTB may be required by BOC to report to it annually concerning the claims it resolves under this authority.

**Under current law and this bill**, any claims associated with a particular agency that are allowed based on the law are paid by that agency through its budget. If a claim is allowed based on equity, the payment is appropriated through a legislative claims bill as a General Fund expenditure, but the particular agency's support budget is reduced by a corresponding amount.

#### Considerations

oIt appears that this provision merely shifts a workload and the associated administrative costs from one agency to another.

oThis additional delegation of authority increases the potential for inconsistent decisions on claims that may result from similarly situated circumstances.

oAccording to BOC staff, this provision removes an unnecessary step in the claim process. Neither FTB's existing role nor administrative costs should significantly change under this provision. BOC staff indicates that claims involving tax law would continue to be sent to FTB for recommendations only; BOC does not intend to forward tax matters to the FTB for resolution even if the claim is framed as an injury/damage claim.

This provision is intended to affect only those claims resulting from other than tax matters. In these non-tax cases rather than make recommendations based on law, as the FTB currently does, the FTB would make the final decision based on equity. Payment of approved claims would continue to be charged against the department's budget, but without the legislative claims bill process.

#### Implementation

This bill could be implemented by FTB; however, staff is inexperienced in making decisions based on perceived equity, rather than a strict interpretation of law.

FISCAL IMPACT

Administrative Costs

FTB's administrative costs would increase according to the workload shifted to FTB and the claims that are paid that would not have been paid under the current processing of these claims. The amount of the increase is unknown.

Tax Revenue Estimate

There is no identifiable tax revenue impact.

\*\*\*\*\*

2) Increase write-off amount to \$250.

#### SUMMARY

Under this provision, the amounts that FTB could write-off would increase from \$50 to \$250.

#### SPECIFIC FINDINGS

**Under current law**, FTB is authorized to write-off \$50 or less in taxes, fees or other amounts owed the State. Based on past collection experiences and the associated administrative cost of collection, when a balance-due is \$50 or less it is written-off once FTB determines that further action is unwarranted. This determination is based on numerous factors, including the potential for and cost of collection.

**Under this provision**, FTB's write-off amount could increase to \$250. The BOC would have the discretion to authorize the increased dollar amount. The FTB, in turn, could set its write-off level up to the amount authorized and determine at what point in the collection process the write-off would occur.

#### Considerations

oThis provision appears to be a good government law change. It is presumed FTB would continue its current practice of pursuing any collection that it determines to be cost effective and in the best interest of the State.

oOne of FTB's collection responsibilities is the collection of the penalty imposed by the Secretary of State against corporations for failure to file corporate officer statements. This penalty is \$250. FTB also collects fees and penalties from tax exempt organizations that are less than \$250. It may be viewed as non-productive to impose these amounts on the taxpayer yet turn around and write them off if they are not paid timely.

#### Implementation

This provision could be implemented without causing significant changes to FTB's programs or systems.

#### FISCAL IMPACT

##### Administrative Costs

This provision would not significantly impact the department's administrative costs.

##### Tax Revenue Estimate

Any potentially forfeited revenue due to this discretionary authority is unknown but probably would be minor.

\*\*\*\*\*

3)HRA Claims No Longer Approved By BOC.

SUMMARY

Prior year HRA refund claims filed with the FTB would no longer be forwarded to the BOC for approval before they are submitted to the Controller for payment from current year funds.

SPECIFIC FINDINGS

**Under current law/practice**, subsequent to an appeal, FTB may recommend a refund of a HRA claim that it previously denied. Because of the delay in the recommendation, the claim may relate to a prior year but will be paid from current-year revenues. In this event, the refunds must be approved by the BOC before they are forwarded to the Controller for issuance of the refund.

**Under this provision**, the BOC would not approve the claims schedule before the Controller issues the refund. FTB would send the claims schedule directly to the Controller for issuance of the refund.

Consideration

According to FTB staff, the BOC has not rejected any claims of this nature, nor does the law provide any grounds or basis for rejecting a claim. Therefore, this provision would eliminate an apparent unnecessary step in this refund process.

Implementation

FTB's operations or programs would not have significant changes as a result of this provision. Rather than submit a claim to the BOC for approval, the Controller would receive the claim directly from the FTB.

FISCAL IMPACT

This bill would not impact the FTB's administrative costs or tax revenue.

\*\*\*\*\*

4)FTB to Make Public Certain Refunds over \$50,000.

SUMMARY

Under this provision, BOC would no longer approve and make public FTB's determination as to certain PIT and BCT refunds in excess of \$50,000. Instead, FTB's determination would be made public for at least 10 days prior to issuance of the refund.

SPECIFIC FINDINGS

**Under current law**, any PIT and BCT refund determinations in excess of \$50,000 as a result of amended tax returns or audit adjustments must be

approved by BOC. To receive approval, FTB provides BOC with a claim schedule. On the schedule, FTB certifies that the amount of the refund is true, correct and in accordance with law. The schedule includes the taxpayer's name, taxpayer's account number, amount of refund, the purpose for the appropriation and the statutory authority for the disbursement. This information must be forwarded to the BOC approximately 20 days before its scheduled meeting. To accommodate this requirement, FTB computes interest on the refund amount to the applicable BOC hearing date plus five days to allow for internal processing. According to FTB staff, the BOC has not disapproved any refunds under this procedure, nor does the law provide grounds for rejection or rules in the event of rejection.

**Under current law**, tax matters are generally confidential and are not disclosed to the public. Exceptions to this rule are: 1) settlements of tax disputes approved by FTB and (2) tax matters requiring the approval of the BOC (e.g., these amended-return or audit-adjustment refunds in excess of \$50,000 or binding closing agreements).

Both the BOC and FTB must meet in public in accordance with the Open Meeting Act. FTB has the authority to hold a closed session within the public meeting to act on confidential tax matters. BOC does not have the same authority with respect to confidential tax matters; for this reason, any tax matter requiring BOC approval is subject to public disclosure.

The BOC is not required to approve the following:  
.any refunds as a result of original-filed tax returns regardless of amount,  
.refunds of \$50,000 or less as a result of amended tax returns or audit adjustments,  
.tax deficiencies regardless of amount, or  
.overpayments that are offset against tax deficiencies regardless of amount;  
therefore, these tax matters are not public record.

**Under this provision**, instead of public disclosure through the BOC approval process, FTB would certify any refund determinations that exceed \$50,000 as a result of amended returns or audit adjustments and make its determination a public record for at least 10 days prior to the issuance of the refund.

### Considerations

oAmended-return or audit-adjustment refunds of less than \$50,000 and all refunds claimed on original-filed tax returns are made without public disclosure of otherwise confidential taxpayer information. Except for the dollar amount and/or whether it was self-assessed on an original return, the refunds that go to the BOC for approval are no different than the other refunds FTB issues. When refunds result from amended tax returns or audit adjustments, taxpayers have made mistakes and overpaid their taxes. It is unclear why the record should be public, whether through the BOC's current law/practice or this bill. In these situations, taxpayers are receiving a return of their money because of the facts and law. This return of their money should not be an issue subject to public disclosure.

oTax deficiencies are made and paid without public disclosure of confidential taxpayer information. Amended-return and audit-adjustment refunds of over \$50,000 should be as confidential as tax deficiencies, amended-return and audit-adjustment refunds of less than \$50,000 and refunds from original-filed returns.

oThe BOC approval for these refunds is basically a "rubber-stamp" process. There is no basis for the BOC to reject or disapprove a refund; the law does not allow the public to intercede in the issuance of the refund.

These refunds are based on facts and law and the tax return information is protected by FTB's confidentiality laws. Neither the BOC nor the public can technically prevent the issuance of the refund or obtain any additional information about the refund. Therefore, the BOC/public oversight process under current law and the 10-day public notice required by this bill serve little useful purpose and is an invasion of the taxpayer's confidential tax information.

oAn efficient and effective tax system relies on self-compliance. Confidentiality of tax information is the cornerstone to self-compliance. While disclosure of tax return information may be appropriate when a right and need to know the information exists and can be demonstrated, staff is concerned that the right and need for the public to know the information under this provision is not demonstrated under this bill. Therefore, disclosure of this information is inappropriate.

oThe FTB voted on July 19, 1993, to support a similar bill (AB 2051) if it were amended to remove the disclosure provision that requires public disclosure of taxpayer refund information. Attachment A contains the suggested amendments to remove this disclosure requirement.

#### Implementation

Minor changes to current practice and FTB's automated systems would be required. The FTB would hold the claim schedule for 10 days before submitting it to the Controller. The existing claims schedules (forms FTB 828 and 829) would continue to be used and could be the disclosed document as it contains the taxpayer's name, refund amount, the purpose of the appropriation, and the statutory authority for the disbursement information. However, the taxpayer's account number would need to be deleted for purposes of disclosure. During the 10-day period, the claim schedule would be at FTB central office (as designated by the executive officer) and disclosed upon request.

#### Technical Concern

The suggested amendments to resolve the following technical concerns are attached as Attachment B. However, if the policy amendments provided on Attachment A are made to remove the disclosure requirement, the technical concerns identified here would no longer exist and Attachment B should be disregarded.

oOn page 24, lines 9 and 10, the amendment is incorrectly placed. It should be deleted from lines 9 and 10 and a comparable amendment should be added to line 16.

oUnless authorized under Article 2 of Chapter 7 of Part 10.2 of the Revenue and Taxation Code, it is a misdemeanor for the FTB to disclose otherwise confidential tax information. It should be made clear under this article that the public disclosure of this refund information is authorized.

#### FISCAL IMPACT

##### Administrative Costs

This provision should not significantly impact FTB's administrative costs.

##### Tax Revenue Estimate

This provision would accelerate the issuance of refunds and eliminate some interest payments. Any potential savings on reduced interest payments in any given year is unknown.

\*\*\*\*\*

5)Under the PITL and BCTL, the BOC would not have to approve closing agreements to be final and conclusive (binding). Approval by the FTB, itself, would bind the agreement.

#### SUMMARY

Under this provision, closing agreements entered into under the PITL or BCTL would be binding if approved by the FTB, itself, rather than the BOC.

#### SPECIFIC FINDINGS

**Under current law**, for PIT and BCT closing agreements to be binding, the BOC must approve the closing agreement. According to FTB staff, the BOC has not disapproved any closing agreements. Closing agreements are contracts between the FTB and taxpayers whereby tax disputes, current and prospective, are settled. Although the statutory authority for closing agreements appears broad, the authority has never been interpreted by the FTB to confer general settlement authority. Closing agreements are used to conclude matters for estates or trusts or other relatively rare situations where it is in the best interest of the state to permanently and finally close a tax dispute.

**Under this provision**, binding closing agreement would be approved by the FTB members, instead of the BOC.

#### Consideration

State of California

Board of Equalization

**M e m o r a n d u m**

**To :** Ms. Diane Olson  
Board Proceedings Division (MIC:80)

**Date :** August 14, 2009

**From :** Philip Spielman  
Supervisor, Petitions Section (MIC: 38)

**Subject :** Cancellation of Consumer Use Tax Determinations over \$50,000.00  
Involving Vehicles, Vessels, and Aircraft

The listing of cancellations of consumer use tax determinations over \$50,000 involving vehicles, vessels, and aircraft to be available as a public record for at least 10 days prior to the effective date of cancellation are as follows:

<u>Account Number</u>	<u>Appeals Case Number</u>	<u>Amount</u>
<b>Redeterminations: (to zero)</b>		
1. SP UT 84-053993	384846	\$334,934.65

Please inform the Department of the date the above referenced cases are made public record via e-mail to my attention with a cc: to Mr. Steve Adams.

*Philip Spielman*

Public Record-CUT Cancellation Listings.dotCC:

Mr. Steve Adams, Supervising Tax Auditor (MIC:38)  
Ms. Catherine Wurst, Business Taxes Appeals (MIC:80)



**M e m o r a n d u m****State Board of Equalization  
OPERATIONS MEMO  
For Public Release****No: 1110**

Date: December 26, 2003

**SUBJECT: Consumer Use Tax Vehicle, Vessel, and Aircraft Determination Cancellations  
in Excess of \$50,000****I. GENERAL**

On June 25, 2003, the Board delegated to the Sales and Use Tax Department (SUTD) the authority to cancel or redetermine to zero all vehicle, vessel, and aircraft individual determinations (billings) in excess of \$50,000. The Board also ordered that the Board Reference Manual be amended to reflect the revised levels of delegation and to require that the public records on those items above \$50,000 that are canceled or redetermined to zero be retained in the Board Proceedings Division.

**II. PROCEDURES**

A. Approvals for all vehicle, vessel, and aircraft Consumer Use Tax (CUT) billing cancellations in excess of \$50,000 will be sent to the SUTD and will no longer be heard on the Board's non-appearance Consent Calendar.

B. The Petitions Section will coordinate sending all such cancellations in excess of \$50,000 to the Deputy Director, SUTD, or designee for approval.

C. The Petitions Section will notify the Board Proceedings Division of the account number, appeals case number, and cancellation amount to be included in the public record ten days before the effective date of the approval pursuant to Revenue and Taxation Code sections 6901 and 6981.

In general, with the exceptions noted above, the current review process and workflow related to such cancellations of CUT billings in excess of \$50,000 will remain unchanged.

**II. HEADQUARTERS RESPONSIBILITY**

A. Deputy Director, SUTD, or Designee: The Deputy Director, SUTD, or designee, shall approve cancellations of all vehicle, vessel, and aircraft billings in excess of \$50,000 when tax is

determined not to be due. The approval becomes effective ten days after the cancellation is made available as a public record.

B. Petitions Section: The Petitions Section will coordinate approval of cancellations of all vehicles, vessels, and aircraft CUT billings in excess of \$50,000. The Petitions Section will forward for approval to the Deputy Director, SUTD, or designee, all such CUT cancellations in excess of \$50,000 when tax is determined not to be due. The Petitions Section will continue to review cancellation recommendations received from the Centralized Collection Section or received pursuant to petitions for redetermination. Case files of pending approvals are to be maintained in the Petitions Section.

The Petitions Section will notify Board Proceedings of the account number, appeals case number and cancellation amount at least ten days before the effective date of the approved cancellation and maintain a record of such notification. The Petitions Section will process approved cancellations on the Integrated Revenue Information System (IRIS) and issue appropriate notices or statements to taxpayers to reflect the cancellation of billings following the ten day public record period and approval of the cancellation.

The Petitions Section will notify the Audit Determination and Refund Section when approved cancellations involve a resulting refund in excess of \$50,000 following the ten day public record period. The resulting refund in excess of \$50,000 will require scheduling on the non-appearance Consent Calendar for Board member approval.

C. Board Proceedings Division: The Board Proceedings Division will amend the Board Reference Manual to reflect the revised levels of delegation and make as a public record cases referred to it from the SUTD. The public record will consist of the account number appeals case number, and amount of cancellation and will be retained for a period of one year. The Board Proceedings Division will notify the SUTD of the date such cases were made a public record. The Board Proceedings Division will respond to inquiries regarding the public record.

Board Proceedings will forward to the SUTD all CUT cancellation cases involving vehicles, vessels and aircraft where an oral hearing request was previously acknowledged by the Board Proceedings Division. Recommended cancellations will not be presented to the Board members for hearing.

D. Audit Determination and Refund Section: When cancellation of the billing results in a refund of payments in excess of \$50,000, the refund will continue to require approval by the members of the Board and will be scheduled on the Board's non-appearance Consent Calendar. The Petitions Section, after preparing the case summary for the Consent Calendar, will forward cancellations resulting in a refund in excess of \$50,000 to the Audit Determination and Refund Section for further processing. The Audit Determination and Refund Section is responsible for scheduling refunds in excess of \$50,000 on the non-appearance Consent Calendar for Board approval and the issuance of the approved refund. The Petitions Section will issue a closing notice or statement only after Board approval of the refund.

E. Centralized Collection Section: The Centralized Collection Section will continue to forward all recommendations to approve CUT billing cancellations over \$50,000 to the Petitions Section for final approval and cancellation.

F. Consumer Use Tax Section: The CUT Section will issue the original use tax billing, as is current practice. The CUT Section will refer claims for refund, including refunds in excess of \$50,000, to the Audit Determination and Refund Section for processing.

#### IV. OBSOLECENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

Ramon J. Hirsig  
Deputy Director  
Sales and Use Tax Department

Distribution:

Labeled

# Memorandum

**To:** Ms. Diane Olson, Chief  
Board Proceedings Division (MIC:80)

**Date:**

**From:** Steven P. Sisti, Supervisor  
Audit Determination and Refund Section (MIC:39)

**Subject:** Refunds, Credits, and Cancellations of Sales and Use Tax Over \$50,000

Below is a listing of proposed decisions to refund, credit, or cancel sales and use tax amounts over \$50,000, including decisions to relieve penalties and/or interest and redeterminations. This listing is a public record and must be made available to the public if requested after the date of this memorandum.

	Name	Appeal Case ID	Category	Office Code
1	ABC Store	09-XXXX	Refund	GH
2	Speedy Gas	08-XXXX	Credit	AP
3	Jim's Garage	09-XXXX	Cancellation	UT

The Audit Determination and Refund Section (ADRS) has proposed to refund or credit the above amounts because they were overpaid or paid as a result of an error. ADRS has proposed to cancel the above taxes, penalties, and/or interest because they were determined in error or qualified for relief under provisions of the Sales and Use Tax Law. The refunds, credits, and cancellations may be completed 10 days after the date of this memorandum.

SPS:xx

**cc:** Mr. Kevin Hanks, Chief (MIC:49)  
Ms. Catherine Wurst, Business Taxes Appeals (MIC:80)  
Ms. Shirley Marte, Disclosure Officer (MIC:82)

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

OCTOBER 6, 2009

ITEM J1

CHIEF COUNSEL MATTERS

RULEMAKING

Reported by: Beverly D. Toms

No. CSR 1662

P R E S E N T

For the Board  
of Equalization:

Betty Yee  
Chair

Jerome E. Horton  
Vice-Chair

Bill Leonard  
Member

Michelle Steel  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State Controller  
(per Government Code  
Section 7.9)

Diane Olson  
Chief, Board  
Proceedings Division

Board of Equalization  
Staff:

Bradley Heller  
Tax Counsel

---oOo---

Sacramento, California

October 6, 2009

---o00---

MS. OLSON: Now we're on J1.

MS. YEE: Okay.

MS. OLSON: Adoption for Proposed Amendments to Rules of Tax Appeals Regulation 5237, Board approval required for refunds over \$50,000 and Rules for Tax Appeals Regulation 5266, Appeals Staff Recommendations, Requests for Oral Hearings.

MS. YEE: Okay. Thank you very much.

Good morning -- good afternoon, Mr. Heller.

MR. HELLER: Good afternoon, Madam Chair, Members of the Board.

I'm here to -- first of all to request the Board's adoption of the proposed amendments to Regulations 5237 and 5266 with the additions of the new subdivisions "g" which were the substantially related -- substantially related revisions that were referred to the 15-day file during the August meeting.

And essentially those subdivision "g"s were both added to incorporate the public record requirements for refunds over \$50,000.

In addition, to requesting the Board's adoption of the proposed amendments today, staff's also prepared a memorandum with more additional background information on the public record requirements. And also prepared an

1 example of a -- example public record for Sales and Use  
2 Tax refunds, credits and cancellations and has also just  
3 recently distributed a flow chart showing the staff  
4 approval process for these refunds and showing that the  
5 Deputy Directors would have to approve any refunds in  
6 excess of \$50,000.

7 MS. YEE: Okay. Thank you very much, Mr.  
8 Heller. And thank you for bringing this back. When we  
9 had this discussion previously we actually had a very  
10 robust discussion with respect to the issue of public  
11 notice and public record. And I appreciate the staff  
12 looking into differentiating between the two, certainly  
13 as statute guides us.

14 And I guess my question is, is there a reason  
15 why we couldn't add the amount to the format that you're  
16 proposing?

17 MR. HELLER: Actually at this point there's no  
18 reason we couldn't add the amount. The Legal Department  
19 believes that the public record requirement is  
20 essentially an exception to the various confidentiality  
21 provisions that would apply to the amounts of the  
22 credits, cancellations and refunds.

23 However, staff's just recommended maintaining  
24 the status quo and including the same information that  
25 we currently put in the public agenda notice.

26 But there's really no restriction and it's  
27 really up to the Board's discretion and weighing the --  
28 weighing the interest of the taxpayers whose credits,



1 cancellations and refunds are at issue, rights to  
2 confidentiality just versus the -- you know, the  
3 information the public needs to make sure that there's a  
4 public record of our proposed determinations.

5 MS. YEE: Okay. And I guess the reason I'm  
6 pursuing this is that it seems to me the -- even though  
7 the statute is not specific with regard to the  
8 information that has to be included as a matter of  
9 public record, I think certainly when those provisions  
10 were enacted by the Legislature there have been some  
11 understanding about the information that would be -- I  
12 guess it be retained as a matter of public record by  
13 this Board, by our organization, be similar to what  
14 would be forwarded potentially to the Board of Control.

15 And so it seems to me amounts would probably  
16 need to be forwarded to the Board of Control, so I was  
17 looking for some symmetry there. But I certainly  
18 understand also the need to balance all this with  
19 taxpayer confidentiality.

20 And I guess I would have a different take if it  
21 weren't credits, cancellations and refunds. It would --  
22 but I just feel like full disclosure is probably  
23 appropriate here.

24 Other thoughts, Members?

25 MR. LEONARD: Madam Chair.

26 MS. YEE: Mr. Leonard.

27 MR. LEONARD: I understand your point. I would  
28 hesitate to further violate taxpayer privacy than we

1 already do in the public agenda notice under the current  
2 procedure by -- by publishing dollar numbers for  
3 credits, cancellations, refunds, given the circumstances  
4 of some of these claims of -- of embarrassment to the  
5 taxpayer for accidental errors and other almost  
6 irrelevant immaterial things, although the -- the claim  
7 could be -- could be like quite large relative to the  
8 taxpayer that's -- that's filing the claim.

9 I would -- I would hesitate to go any further  
10 than we now do in making an effort to -- to delegate  
11 some of this -- some of this more routine work for the  
12 under \$50,000. And -- or the over -- I guess the over  
13 50 under 100, and want to continue to press that we work  
14 with the Legislature on -- on the whole question of  
15 what -- what is the public policy in advertising  
16 publicly any refund to any taxpayer and -- and the taxes  
17 and fees that are under us in our jurisdiction, which is  
18 so unlike the Franchise Tax Board, which has a whole  
19 different set of rules regarding refunds.

20 MS. YEE: Okay. Thank you, Mr. Leonard.

21 Other comments, Members?

22 Okay, is there a motion?

23 MS. MANDEL: Move adoption.

24 MR. LEONARD: Second.

25 MS. YEE: Okay. Motion by Ms. Mandel, second  
26 by Mr. Leonard.

27 Without objection, that motion carries.

28 Thank you, Mr. Heller.

MR. LEONARD: Thank you, Mr. Heller.

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REPORTER'S CERTIFICATE

State of California )  
 ) ss  
 County of Sacramento )

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on October 6, 2009 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding 6 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: October 14, 2009.

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BEVERLY D. TOMS  
 Hearing Reporter